

AMENDED IN SENATE APRIL 10, 1997

SENATE BILL

No. 1106

**Introduced by Committee on Revenue and Taxation
(Senators Alpert (Chair), Greene, Karnette, Knight, Kopp,
and McPherson)**

February 28, 1997

An act to amend Section 30 of the Business and Professions Code, to amend Section 1666.5 of the Insurance Code, to amend Sections 17052.15, 17053.45, 17053.46, 17053.49, 17062, 17220, 17502, 17570, 18402, 18604, 18606, 18621.5, 18633, 18633.5, 18637, 18638, 18645, 18662, 18670, 19009, 19011, 19021, 19023, 19024, 19058, 19132.5, 19141.5, 19141.6, 19147, 19164, 19192, 19254, 19263, 19280, 19282, 19301, 19340, 19392, 19411, 19542, 19563, 19701, 19705, 19706, 19719, 23037, 23038, 23040.1, 23095, 23098, ~~23101~~, 23151, 23151.1, 23151.2, 23153, 23183.1, 23183.2, 23186, 23221, 23303, 23305.2, 23332, 23332.5, 23334, 23455, 23501, 23610.5, 23612.6, 23623.5, 23625, 23645, 23646, 23649, 23731, 23802, 23809, 23811, 24346, 24356.4, 24356.8, 24357, 24358, 24359, 24402, 24407, 24408, 24409, 24411, 24416, 24416.2, 24602, 24677, 24678, 24710, 24901, 24912, 24916, 24917, 24918, 24942, 25105, 25110, 25111, 25112, and 25128 of, to amend and renumber Section 19532 of, to amend and renumber the heading of Article 6 (commencing with Section 19280) of Chapter 5 of Part 10.2 of Division 2 of, to add Section 24954 to, and to repeal Sections 23184, 23184.5, 23185, 23185a, 23185b, 23186.1, 23186.2, 23186.5, and 24903 of, the Revenue and Taxation Code, to amend Section 1088.5 of the Unemployment Insurance Code, and to amend Section 56 of Chapter 952 of the Statutes of 1996,

relating to taxation, and making an appropriation therefor, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

SB 1106, as amended, Committee on Revenue and Taxation. Taxation.

(1) Existing law requires any board, as defined under the Business and Professions Code, including the State Bar and the Department of Real Estate, and the Insurance Commissioner to require that any licensee at the time of issuance or renewal of a license provide its federal employer identification number, if the licensee is a partnership, or his or her social security number for all others. Existing law also provides that any licensee failing to provide this information shall be reported by the licensing entity to the Franchise Tax Board, as specified, and shall be subject to a penalty if the licensee fails to provide the required information after notification by the Franchise Tax Board.

This bill would make technical clarifying changes in those provisions.

(2) The Personal Income Tax Law and the Bank and Corporation Tax Law authorize various credits against the taxes imposed by those laws, including credits for the amount of sales or use tax paid or incurred in connection with the purchase of qualified property in the Los Angeles Revitalization Zone, for the amount of sales or use tax paid or incurred in connection with the purchase of qualified property for exclusive use in a local agency military base recovery area, and for certain wages paid to specified employees employed in a local agency military base recovery area. Existing law requires a taxpayer whose expenses may qualify for more than one credit to elect which credit to claim among all the credits allowed under those laws.

This bill would instead provide that only one applicable credit is allowed with respect to the amount of the expenditure claimed.

(3) The Personal Income Tax Law and the Bank and Corporation Tax Law allow to qualified taxpayers, as defined, a credit against taxes imposed by those laws in an amount

equal to 6% of the amount paid or incurred during the taxable or income year for qualified property, as defined, that is placed in service in this state. These provisions refer to the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, and as further amended.

This bill would delete the reference to the amended version of that manual and would also make a technical change in those provisions.

(4) The Personal Income Tax Law and the Bank and Corporation Tax Law provide for the levy of an alternative minimum tax in partial conformity with federal law, subject to certain modifications that include a tentative minimum tax.

This bill would clarify the definition of “qualified taxpayer” by defining “aggregate gross receipts, less returns and allowances,” “gross receipts, less returns and allowances,” and “proportionate interest.”

(5) *The Personal Income Tax Law and the Bank and Corporation Tax Law, in conformity with federal income tax laws, provide for the postponement of gain from the exercise of specified types of stock options until the sale of the stock.*

Both laws also establish a California qualified stock option that allows the specified postponement of taxes upon the exercise of any other type of stock option, if the stock option is limited to a specified number of shares and value, and is exercised by individuals who are employees with earned income below a specified amount and who meet other specified conditions.

This bill would modify the characteristics of a California qualified stock option and would authorize a corporation to designate that the stock option that is otherwise a California qualified stock option is to be treated as such at the time the option is granted, as provided. This bill would make related technical and conforming changes to specified provisions of the alternative minimum tax.

(6) The Personal Income Tax Law provides that no deduction shall be allowed for any tax imposed under the Bank and Corporation Tax Law.



This bill would make a technical nonsubstantive change to those provisions by deleting a confusing and unnecessary reference.

~~(6)~~

(7) The Personal Income Tax Law and the Bank and Corporation Tax Law provide specified conformity to federal income tax laws relating to the mark to market accounting method for securities dealers for taxable or income years beginning on or after January 1, 1998.

This bill would revise those provisions to conform for taxable or income years beginning on or after January 1, 1997.

~~(7)~~

(8) Existing law governing the administration of franchise and income taxes and the Bank and Corporation Tax Law contain various tax and tax administration provisions that are specifically applicable to both banks and corporations, various provisions that are specifically applicable either to banks or to corporations generally, but not both, and various provisions which are specifically applicable to corporations, but are administratively applied also to banks.

This bill would modify the definition of “corporation” to include banks, unless specifically provided otherwise, would provide specific language to exempt banks from certain existing provisions of the above tax and tax administration laws where intentional differences between the treatment of banks and corporations are clear, and would replace the phrase “bank or corporation” with the term “corporation” throughout the remaining provisions of those laws.

This bill would provide that the various changes made by the bill would be applicable from the original date of enactment of the affected statutory provisions, with certain exceptions.

~~(8)~~

(9) The Personal Income Tax Law, among other things, requires partnerships and limited liability companies to make returns that include specified information.

This bill would require the Franchise Tax Board to prescribe the manner and extent to which the specified information shall be included in the returns, as provided.

~~(9)~~



(10) Existing law permits the Franchise Tax Board to obtain a copy of the federal information return of any person if a return was required in specified circumstances.

This bill would additionally permit the Franchise Tax Board to obtain a copy of the federal information return of any person if a return was required to be filed regarding the cancellation of indebtedness by certain financial entities.

~~(10)~~

(11) The Bank and Corporation Tax Law imposes a franchise tax on banks and financial corporations that is in-lieu of all other state, county, and municipal taxes and licenses, except as specified. The in-lieu tax is imposed on banks because national banks are exempt from most local taxes. The “in-lieu” tax was extended to financial corporations for income years beginning on or after January 1, 1981. Existing law, for income years beginning on or after January 1, 1981, allows financial corporations to offset specified local taxes against the franchise tax and provides that the intent of those provisions is to minimize the difference between banks and financial corporations. Existing law provides that final action on the allowance of an offset under those provisions is deferred until a final court determination of whether charter cities may impose local taxes on financial corporations.

This bill would repeal those offset provisions as obsolete on the basis that financial corporations are exempt from local taxation to the same degree as banks. The bill would also make related and conforming changes.

~~(11)~~

(12) Existing law pertaining to the administration of franchise and income taxes requires all apportioning taxpayers to maintain specified information.

This bill would make a technical, nonsubstantive change to those provisions by deleting an obsolete reference.

~~(12)~~

(13) Existing law permits, until 1999, the referral of fines, state or local penalties, forfeitures, restitution fines, or restitution orders imposed by specified courts upon a person for criminal offenses under certain conditions to the Franchise tax Board for collection under guidelines prescribed by that board. Amounts collected are deposited in

the Court Collection Account in the General Fund which is continuously appropriated for the purpose of distribution to the county or the state fund to which the amount was originally due.

This bill would extend that authority to other amounts imposed by those courts upon a person for criminal offenses. By providing for the collection of these other amounts which would be continuously appropriated, this bill would make an appropriation.

This bill would also require that restitution orders may be referred to the Franchise Tax Board by a government entity that meets specified additional criteria. The bill would also provide that amounts collected pursuant to a restitution fine or restitution order be deposited and disbursed in accordance with the laws relating to reimbursement of the State Restitution Fund.

This bill would make other related technical and conforming changes to those provisions.

~~(13)~~

(14) Existing laws relating to the administration of personal income and bank and corporation taxes provide for the allowance and payment of interest on any overpayment in respect of any tax, as specified, and require that any credit first be credited on any taxes due from the taxpayer under the Personal Income Tax Law or the Bank and Corporation Tax Law.

This bill would instead require that any credit first be credited on any amounts due from the taxpayer under those laws or the laws relating to the administration of those laws.

~~(14) The Bank and Corporation Tax Law, among other things, imposes specified taxes on corporations that are doing business, as defined, in this state.~~

~~This bill would include in the definition of doing business, with certain exceptions, the holding of an ownership interest in an entity that is treated for tax purposes as a partnership that is doing business in this state.~~

(15) *The Bank and Corporation Tax Law defines the term "corporation," for purposes of the corporation income tax, to include associations, excluding banking associations and including nonprofit associations that perform services, borrow*

money, or own property, and Massachusetts or business trusts, as defined.

This bill would instead define the term “corporation” to include associations, excluding banking associations and including nonprofit associations that perform services, borrow money, or own property, business trusts, and other business entities classified as associations and taxable as corporations under regulations of the Franchise Tax Board, as specified.

(16) The Bank and Corporation Tax Law provides that a corporation that incorporates under the laws of this state or qualifies to transact interstate business in this state shall prepay a specified minimum franchise tax of \$800, except for a qualified new corporation, as defined. Existing law defines a “qualified new corporation” as a corporation that reasonably estimates that, for the income year, it will have both gross receipts, less returns and allowances reportable to the state, of less than \$1,000,000 and a tax liability that does not exceed \$800. This exception does not apply to a corporation if 50% or more of its stock is owned by another corporation.

This bill would clarify that definition to instead refer to gross receipts, less returns and allowances reportable to the state, of \$1,000,000 or less. This bill would instead provide that the exception does not apply to a corporation if 50% or more of its stock is, or will be upon the initial issuance of stock, owned by another corporation.

~~(16)~~

(17) The Personal Income Tax Law, by reference to a specified federal statute, conforms to federal income tax laws relating to sales of stock to employee stock ownership plans or certain cooperatives.

This bill would, under the Bank and Corporation Tax Law, provide the same conformity to federal income tax laws relating to sales of stock to employee stock ownership plans or certain cooperative.

~~(17)~~

(18) This bill would make technical changes in various provisions of the Personal Income Tax and Bank and Corporation Tax Law regarding discharge of indebtedness and other provisions of law regarding disclosure of employee registry information to the Franchise Tax Board.

~~(18)~~

(19) Existing law defines the term “taxable year” for purposes of the Personal Income Tax Law, and also defines the term “income year” for purposes of the Bank and Corporation Tax Law. Existing law also specifies that the provisions of Chapter 952 of the Statutes of 1996, which contains various provisions in both the Personal Income Tax Law and the Bank and Corporation Tax Law, shall be applied to taxable years beginning on or after January 1, 1997.

This bill would instead specify that the provisions of Chapter 952 of the Statutes of 1996 shall be applied to both taxable and income years beginning on or after January 1, 1997.

~~(19)~~

(20) This bill would take effect immediately as a tax levy, but would be applicable to income years beginning on or after January 1, 1998, with respect to certain provisions, and certain other provisions would become operative on January 1, 1998.

Vote: ²/₃. Appropriation: yes. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 30 of the Business and
 2 Professions Code is amended to read:
 3 30. (a) Notwithstanding any other provision of law,
 4 any board, as defined in Section 22, and the State Bar and
 5 the Department of Real Estate shall at the time of
 6 issuance or renewal of the license require that any
 7 licensee provide its federal employer identification
 8 number if the licensee is a partnership or his or her social
 9 security number for all others.
 10 (b) Any licensee failing to provide the federal
 11 identification number or social security number shall be
 12 reported by the licensing board to the Franchise Tax
 13 Board and, if failing to provide after notification pursuant
 14 to paragraph (1) of subdivision (b) of Section 19528 of the
 15 Revenue and Taxation Code, shall be subject to the
 16 penalty provided in paragraph (2) of subdivision (b) of
 17 Section 19528 of the Revenue and Taxation Code.

(c) In addition to the penalty specified in subdivision (b), a licensing board may not process any application for an original license or for renewal of a license unless the applicant or licensee provides its federal employer identification number or social security number where requested on the application.

(d) A licensing board shall, upon request of the Franchise Tax Board, furnish to the Franchise Tax Board the following information with respect to every licensee:

(1) Name.

(2) Address or addresses of record.

(3) Federal employer identification number if the entity is a partnership or social security number for all others.

(4) Type of license.

(5) Effective date of license or renewal.

(6) Expiration date of license.

(7) Whether license is active or inactive, if known.

(8) Whether license is new or renewal.

(e) For the purposes of this section:

(1) "Licensee" means any entity, other than a corporation, authorized by a license, certificate, registration, or other means to engage in a business or profession regulated by this code or referred to in Section 1000 or 3600.

(2) "License" includes a certificate, registration, or any other authorization needed to engage in a business or profession regulated by this code or referred to in Section 1000 or 3600.

(3) "Licensing board" means any board, as defined in Section 22, the State Bar, and the Department of Real Estate.

(f) The reports required under this section shall be filed on magnetic media or in other machine-readable form, according to standards furnished by the Franchise Tax Board.

(g) Licensing boards shall provide to the Franchise Tax Board the information required by this section at a time that the Franchise Tax Board may require.

(h) Notwithstanding Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code, the social security number and federal employer identification number furnished pursuant to this section shall not be deemed to be a public record and shall not be open to the public for inspection.

(i) Any deputy, agent, clerk, officer, or employee of any licensing board described in subdivision (a), or any former officer or employee or other individual who in the course of his or her employment or duty has or has had access to the information required to be furnished under this section, may not disclose or make known in any manner that information, except as provided in this section to the Franchise Tax Board or as provided in subdivision (k).

(j) It is the intent of the Legislature in enacting this section to utilize the social security account number or federal employer identification number for the purpose of establishing the identification of persons affected by state tax laws and for purposes of compliance with Section 11350.6 of the Welfare and Institutions Code and, to that end, the information furnished pursuant to this section shall be used exclusively for those purposes.

(k) If the board utilizes a national examination to issue a license, and if a reciprocity agreement or comity exists between the State of California and the state requesting release of the social security number, any deputy, agent, clerk, officer, or employee of any licensing board described in subdivision (a) may release a social security number to an examination or licensing entity, only for the purpose of verification of licensure or examination status.

SEC. 2. Section 1666.5 of the Insurance Code is amended to read:

1666.5. (a) Notwithstanding any other provision of law, the commissioner shall at the time of issuance or renewal of any license under this chapter or Chapter 6 (commencing with Section 1760), Chapter 7 (commencing with Section 1800), or Chapter 8 (commencing with Section 1831) require that any licensee provide its federal employer identification

1 number if the licensee is a partnership or his or her social
2 security number for all others.

3 (b) Any licensee failing to provide the federal
4 identification number or social security number shall be
5 reported by the commissioner to the Franchise Tax Board
6 and, if failing to provide after notification pursuant to
7 paragraph (1) of subdivision (b) of Section 19528 of the
8 Revenue and Taxation Code, shall be subject to the
9 penalty provided in paragraph (2) of subdivision (b) of
10 Section 19528 of the Revenue and Taxation Code.

11 (c) The commissioner shall, upon request of the
12 Franchise Tax Board, furnish to the board all of the
13 following information with respect to every licensee:

14 (1) Licensee's name.

15 (2) Address or addresses of record.

16 (3) Federal employer identification number if the
17 entity is a partnership or owner's name and social security
18 number for all others.

19 (4) Type of license.

20 (5) Effective date of license or renewal.

21 (6) Expiration date of license.

22 (7) Whether license is active or inactive, if known.

23 (8) Whether license is new or renewal.

24 (d) For the purposes of this section:

25 (1) "Licensee" means any entity, other than a
26 corporation, authorized by a license, certificate,
27 registration, or other means to engage in the insurance
28 business regulated by this code.

29 (2) "License" includes a certificate, registration, or
30 any other authorization needed to engage in the
31 insurance business regulated by this code.

32 (e) The reports required under this section shall be
33 filed on magnetic media or in other machine-readable
34 form, according to standards furnished by the Franchise
35 Tax Board.

36 (f) The commissioner shall begin providing to the
37 Franchise Tax Board the information required by this
38 section as soon as economically feasible, but no later than
39 July 1, 1987. The information shall be furnished at a time
40 that the Franchise Tax Board may require.

(g) Notwithstanding Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code, the information furnished pursuant to this section shall not be deemed to be a public record and shall not be open to the public for inspection.

(h) Any deputy, agent, clerk, officer, or employee of the commissioner, or any former officer or employee or other individual who in the course of his or her employment or duty has or has had access to the information required to be furnished under this section, shall not disclose or make known in any manner that information, except as provided in this section to the Franchise Tax Board.

(i) It is the intent of the Legislature in enacting this section to utilize the social security account number or federal employer identification number for the purpose of establishing the identification of persons affected by state tax laws and, to that end, the information furnished pursuant to this section shall be used exclusively for tax enforcement purposes.

SEC. 3. Section 17052.15 of the Revenue and Taxation Code is amended to read:

17052.15. (a) For each taxable year beginning on or after January 1, 1992, and before January 1, 1998, there shall be allowed a credit against the “net tax,” as defined in Section 17039, an amount equal to the sales or use tax paid or incurred during the taxable year by the taxpayer in connection with the taxpayer’s purchase of qualified property.

(b) For purposes of this section:

(1) “Taxpayer” means a person or entity engaged in a trade or business within the Los Angeles Revitalization Zone designated pursuant to Section 7102 of the Government Code.

(2) “Qualified property” means the purchase on or after May 1, 1992, and before the zone expiration date, of either or both of the following:

(A) Building materials to replace or repair the taxpayer’s building and fixtures.

(B) Machinery or equipment, excluding inventory, to be used by the taxpayer exclusively in the Los Angeles Revitalization Zone.

(3) “Zone expiration date” means the date the Los Angeles Revitalization Zone designation expires, is repealed, or becomes inoperative pursuant to Section 7102, 7103, or 7104 of the Government Code.

(c) If the taxpayer is allowed a credit for qualified property pursuant to this section, only one credit shall be allowed to the taxpayer under this part with respect to that qualified property.

(d) In the case where the credit otherwise allowed under this section exceeds the net tax for the taxable year, that portion of the credit that exceeds the net tax may be carried over and added to the credit, if any, in succeeding taxable years for the number of taxable years in which the designation of the Los Angeles Revitalization Zone under Section 7102 of the Government Code is operative, or 15 taxable years, if longer, until the credit is exhausted. The credit shall be applied first to the earliest taxable years possible.

(e) Any taxpayer who elects to be subject to this section shall not be entitled to increase the basis of the property as otherwise required by Section 164(a) of the Internal Revenue Code with respect to the sales and use tax paid or incurred in connection with the taxpayer’s purchase of qualified property.

(f) (1) The amount of credit otherwise allowed under this section and Sections 17053.10 and 17053.17, including any credit carryover from prior years, that may reduce the net tax for the taxable year shall not exceed the amount of tax that would be imposed on the taxpayer’s business income attributable to the Los Angeles Revitalization Zone (designated pursuant to Section 7102 of the Government Code) determined as if that attributable income represented all of the income of the taxpayer subject to tax under this part.

(2) The amount of attributable income described in paragraph (1) shall be that portion of the taxpayer’s California source business income which is apportioned

1 to the Los Angeles Revitalization Zone. For that purpose,
2 the taxpayer's business income attributable to sources in
3 this state first shall be determined in accordance with the
4 provisions of Chapter 17 (commencing with Section
5 25101) of Part 11. That business income shall be further
6 apportioned to the Los Angeles Revitalization Zone in
7 accordance with the provisions of Article 2 (commencing
8 with Section 25120) of Chapter 17 of Part 11, modified as
9 follows:

10 (A) Business income shall be apportioned to the Los
11 Angeles Revitalization Zone by multiplying total
12 California business income of the taxpayer by a fraction,
13 the numerator of which is the property factor plus the
14 payroll factor, and the denominator of which is two.

15 (B) The property factor is a fraction, the numerator of
16 which is the average value of the taxpayer's real and
17 tangible personal property owned or rented and used in
18 the Los Angeles Revitalization Zone during the taxable
19 year and the denominator of which is the average value
20 of all the taxpayer's real and tangible personal property
21 owned or rented and used in this state during the taxable
22 year.

23 (C) The payroll factor is a fraction, the numerator of
24 which is the total amount paid by the taxpayer in the Los
25 Angeles Revitalization Zone during the taxable year for
26 compensation, and the denominator of which is the total
27 compensation paid by the taxpayer in this state during the
28 taxable year.

29 (3) The portion of the credit remaining, if any, after
30 application of this subdivision, shall be carried over to
31 succeeding taxable years, as if it were an amount
32 exceeding the net tax for the taxable year, as provided in
33 subdivision (d).

34 (g) If the qualified property is disposed of or no longer
35 used by the taxpayer in the Los Angeles Revitalization
36 Zone, at any time before the close of the second taxable
37 year after the property is placed in service, the amount
38 of the credit previously claimed shall be added to the
39 taxpayer's tax liability in the taxable year of that
40 disposition or nonuse.

1 (h) This section shall be inoperative on the first day of
2 the taxable year beginning on or after the determination
3 date, and each taxable year thereafter, with respect to the
4 taxpayer's business activities within a geographic area
5 that is excluded from the map pursuant to Section 7102 of
6 the Government Code, or an excluded area determined
7 pursuant to Section 7104 of the Government Code. The
8 determination date is the earlier of the first effective date
9 of a determination under subdivision (c) of Section 7102
10 of the Government Code occurring after December 1,
11 1994, or the first effective date of an exclusion of an area
12 from the amended Los Angeles Revitalization Zone
13 under Section 7104 of the Government Code. However,
14 if the taxpayer has any unused credit amount as of the
15 date this section becomes inoperative, that unused credit
16 amount may continue to be carried forward as provided
17 in subdivision (d).

18 (i) This section shall remain in effect only until
19 December 1, 1998, and as of that date is repealed.
20 However, any unused credit may continue to be carried
21 forward, as provided in subdivision (d).

22 SEC. 4. Section 17053.45 of the Revenue and Taxation
23 Code is amended to read:

24 17053.45. (a) For each taxable year beginning on or
25 after January 1, 1995, and before January 1, 2003, there
26 shall be allowed as a credit against the "net tax" (as
27 defined by Section 17039) an amount equal to the sales or
28 use tax paid or incurred by the taxpayer in connection
29 with the purchase of qualified property to the extent that
30 the qualified property does not exceed a value of one
31 million dollars (\$1,000,000).

32 (b) For purposes of this section:

33 (1) "LAMBRA" means a local agency military base
34 recovery area designated in accordance with Section 7114
35 of the Government Code.

36 (2) "Taxpayer" means a taxpayer or partnership that
37 conducts a trade or business within a LAMBRA and, for
38 the first two taxable years, has a net increase in jobs
39 (defined as 2,000 paid hours per employee per year) of
40 one or more employees in the LAMBRA.

1 (A) The net increase in the number of jobs shall be
2 determined by subtracting the total number of full-time
3 employees (defined as 2,000 paid hours per employee per
4 year) the taxpayer employed in this state in the taxable
5 year prior to commencing business operations in the
6 LAMBRA from the total number of full-time employees
7 the taxpayer employed in this state during the second
8 taxable year after commencing business operations in the
9 LAMBRA. For taxpayers who commence doing business
10 in this state with their LAMBRA business operation, the
11 number of employees for the taxable year prior to
12 commencing business operations in the LAMBRA shall
13 be zero. If the taxpayer has a net increase in jobs in the
14 state, the credit shall be allowed only if one or more
15 full-time employees is employed within the LAMBRA.

16 (B) The total number of employees employed in the
17 LAMBRA shall equal the sum of both of the following:

18 (i) The total number of hours worked in the LAMBRA
19 for the taxpayer by employees (not to exceed 2,000 hours
20 per employee) who are paid an hourly wage divided by
21 2,000.

22 (ii) The total number of months worked in the
23 LAMBRA for the taxpayer by employees who are salaried
24 employees divided by 12.

25 (C) In the case of a taxpayer who first commences
26 doing business in the LAMBRA during the taxable year,
27 for purposes of clauses (i) and (ii), respectively, of
28 subparagraph (B) the divisors “2,000” and “12” shall be
29 multiplied by a fraction, the numerator of which is the
30 number of months of the taxable year that the taxpayer
31 was doing business in the LAMBRA and the denominator
32 of which is 12.

33 (3) “Qualified property” means the purchase of any of
34 the following for exclusive use in a LAMBRA:

35 (A) High technology equipment, including, but not
36 limited to, computers and electronic processing
37 equipment.

38 (B) Aircraft maintenance equipment, including, but
39 not limited to, engine stands, hydraulic mules, power

1 carts, test equipment, handtools, aircraft start carts, and
2 tugs.

3 (C) Aircraft components, including, but not limited
4 to, engines, fuel control units, hydraulic pumps, avionics,
5 starts, wheels, and tires.

6 (D) Any property that is Section 1245 property, as
7 defined in Section 1245(a)(3) of the Internal Revenue
8 Code.

9 (c) The credit provided under subdivision (a) shall be
10 allowed only for qualified property manufactured in
11 California unless qualified property of a comparable
12 quality and price is not available for timely purchase and
13 delivery from a California manufacturer.

14 (d) In the case where the credit otherwise allowed
15 under this section exceeds the “net tax” for the taxable
16 year, that portion of the credit which exceeds the “net
17 tax” may be carried over and added to the credit, if any,
18 in succeeding years, until the credit is exhausted. The
19 credit shall be applied first to the earliest taxable years
20 possible.

21 (e) Any taxpayer who elects to be subject to this
22 section shall not be entitled to increase the basis of the
23 property as otherwise required by Section 164(a) of the
24 Internal Revenue Code with respect to sales or use tax
25 paid or incurred in connection with the purchase of
26 qualified property.

27 (f) (1) The amount of credit otherwise allowed under
28 this section and Section 17053.46, including any credit
29 carryover from prior years, that may reduce the “net tax”
30 for the taxable year shall not exceed the amount of tax
31 that would be imposed on the taxpayer’s business income
32 attributed to a LAMBRA determined as if that
33 attributable income represented all the income of the
34 taxpayer subject to tax under this part.

35 (2) The amount of attributed income described in
36 paragraph (1) shall be determined in accordance with
37 the provisions of Chapter 17 (commencing with Section
38 25101) of Part 11, modified for purposes of this section as
39 follows:

1 (A) Income shall be apportioned to a LAMBRA by
2 multiplying total business income by a fraction, the
3 numerator of which is the property factor, plus the
4 payroll factor, and the denominator of which is two.

5 (B) “The LAMBRA” shall be substituted for “this
6 state.”

7 (3) The portion of any credit remaining, if any, after
8 application of this subdivision, shall be carried over to
9 succeeding taxable years, as if it were an amount
10 exceeding the “net tax” for the taxable year, as provided
11 in subdivision (d).

12 (g) (1) If the qualified property is disposed of or no
13 longer used by the taxpayer in the LAMBRA, at any time
14 before the close of the second taxable year after the
15 property is placed in service, the amount of the credit
16 previously claimed, with respect to that property, shall be
17 added to the taxpayer’s tax liability in the taxable year of
18 that disposition or nonuse.

19 (2) At the close of the second taxable year, if the
20 taxpayer has not increased the number of its employees
21 as determined by paragraph (2) of subdivision (b), then
22 the amount of the credit previously claimed shall be
23 added to the taxpayer’s net tax for the taxpayer’s second
24 taxable year.

25 (h) If the taxpayer is allowed a credit for qualified
26 property pursuant to this section, only one credit shall be
27 allowed to the taxpayer under this part with respect to
28 that qualified property.

29 (i) This section shall remain in effect only until
30 December 1, 2003, and as of that date is repealed.
31 However, any unused credit may continue to be carried
32 forward as provided in subdivision (d), until the credit is
33 exhausted.

34 SEC. 5. Section 17053.46 of the Revenue and Taxation
35 Code is amended to read:

36 17053.46. (a) For each taxable year beginning on or
37 after January 1, 1995, and before January 1, 2003, there
38 shall be allowed as a credit against the “net tax” (as
39 defined in Section 17039) to a qualified taxpayer for
40 hiring a qualified disadvantaged individual or a qualified

1 displaced employee during the taxable year for
2 employment in the LAMBRA. The credit shall be equal
3 to the sum of each of the following:

4 (1) Fifty percent of the qualified wages in the first year
5 of employment.

6 (2) Forty percent of the qualified wages in the second
7 year of employment.

8 (3) Thirty percent of the qualified wages in the third
9 year of employment.

10 (4) Twenty percent of the qualified wages in the
11 fourth year of employment.

12 (5) Ten percent of the qualified wages in the fifth year
13 of employment.

14 (b) For purposes of this section:

15 (1) “Qualified wages” means:

16 (A) That portion of wages paid or incurred by the
17 employer during the taxable year to qualified
18 disadvantaged individuals or qualified displaced
19 employees that does not exceed 150 percent of the
20 minimum wage.

21 (B) The total amount of qualified wages which may be
22 taken into account for purposes of claiming the credit
23 allowed under this section shall not exceed two million
24 dollars (\$2,000,000) per taxable year.

25 (C) Wages received during the 60-month period
26 beginning with the day the individual commences
27 employment with the taxpayer.

28 (2) “Minimum wage” means the wage established by
29 the Industrial Welfare Commission as provided for in
30 Chapter 1 (commencing with Section 1171) of Part 4 of
31 Division 2 of the Labor Code.

32 (3) “LAMBRA” means a local agency military base
33 recovery area designated in accordance with Section 7114
34 of the Government Code.

35 (4) “Qualified disadvantaged individual” means an
36 individual who satisfies all of the following requirements:

37 (A) (i) At least 90 percent of whose services for the
38 taxpayer during the taxable year are directly related to
39 the conduct of the taxpayer’s trade or business located in
40 a LAMBRA.

1 (ii) Who performs at least 50 percent of his or her
2 services for the taxpayer during the taxable year in the
3 LAMBRA.

4 (B) Who is hired by the employer after the
5 designation of the area as a LAMBRA in which the
6 individual's services were primarily performed.

7 (C) Who is any of the following immediately
8 preceding the individual's commencement of
9 employment with the taxpayer:

10 (i) An individual who has been determined eligible for
11 services under the federal Job Training Partnership Act
12 (29 U.S.C. Sec. 1501 et seq.).

13 (ii) Any voluntary or mandatory registrant under the
14 Greater Avenues for Independence Act of 1985 as
15 provided pursuant to Article 3.2 (commencing with
16 Section 11320) of Chapter 2 of Part 3 of Division 9 of the
17 Welfare and Institutions Code.

18 (iii) Any individual who has been certified eligible by
19 the Employment Development Department under the
20 federal Targeted Jobs Tax Credit Program whether or not
21 this program is in effect.

22 (5) "Qualified taxpayer" means a taxpayer or
23 partnership that conducts a trade or business within a
24 LAMBRA and, for the first two taxable years, has a net
25 increase in jobs (defined as 2,000 paid hours per employee
26 per year) of one or more employees in the LAMBRA.

27 (A) The net increase in the number of jobs shall be
28 determined by subtracting the total number of full-time
29 employees (defined as 2,000 paid hours per employee per
30 year) the taxpayer employed in this state in the taxable
31 year prior to commencing business operations in the
32 LAMBRA from the total number of full-time employees
33 the taxpayer employed in this state during the second
34 taxable year after commencing business operations in the
35 LAMBRA. For taxpayers who commence doing business
36 in this state with their LAMBRA business operation, the
37 number of employees for the taxable year prior to
38 commencing business operations in the LAMBRA shall
39 be zero. If the taxpayer has a net increase in jobs in the

1 state, the credit shall be allowed only if one or more
2 full-time employees is employed within the LAMBRA.

3 (B) The total number of employees employed in the
4 LAMBRA shall equal the sum of both of the following:

5 (i) The total number of hours worked in the LAMBRA
6 for the taxpayer by employees (not to exceed 2,000 hours
7 per employee) who are paid an hourly wage divided by
8 2,000.

9 (ii) The total number of months worked in the
10 LAMBRA for the taxpayer by employees who are salaried
11 employees divided by 12.

12 (C) In the case of a taxpayer who first commences
13 doing business in the LAMBRA during the taxable year,
14 for purposes of clauses (i) and (ii), respectively, of
15 subparagraph (B) the divisors “2,000” and “12” shall be
16 multiplied by a fraction, the numerator of which is the
17 number of months of the taxable year that the taxpayer
18 was doing business in the LAMBRA and the denominator
19 of which is 12.

20 (6) “Qualified displaced employee” means an
21 individual who satisfies all of the following requirements:

22 (A) Any civilian or military employee of a base or
23 former base who has been displaced as a result of a federal
24 base closure act.

25 (B) (i) At least 90 percent of whose services for the
26 taxpayer during the taxable year are directly related to
27 the conduct of the taxpayer’s trade or business located in
28 a LAMBRA.

29 (ii) Who performs at least 50 percent of his or her
30 services for the taxpayer during the taxable year in a
31 LAMBRA.

32 (C) Who is hired by the employer after the
33 designation of the area in which services were performed
34 as a LAMBRA.

35 (c) (1) For purposes of this section, both of the
36 following apply:

37 (A) All employees of trades or businesses that are
38 under common control shall be treated as employed by
39 a single employer.

1 (B) The credit (if any) allowable by this section with
2 respect to each trade or business shall be determined by
3 reference to its proportionate share of the qualified wages
4 giving rise to the credit.

5 The regulations prescribed under this paragraph shall
6 be based on principles similar to the principles that apply
7 in the case of controlled groups of corporations as
8 specified in subdivision (e) of Section 23622.

9 (2) If an employer acquires the major portion of a
10 trade or business of another employer (hereinafter in this
11 paragraph referred to as the “predecessor”) or the major
12 portion of a separate unit of a trade or business of a
13 predecessor, then, for purposes of applying this section
14 (other than subdivision (d)) for any calendar year ending
15 after that acquisition, the employment relationship
16 between an employee and an employer shall not be
17 treated as terminated if the employee continues to be
18 employed in that trade or business.

19 (d) (1) If the employment of any employee, with
20 respect to whom qualified wages are taken into account
21 under subdivision (a) is terminated by the taxpayer at
22 any time during the first 270 days of that employment
23 (whether or not consecutive) or before the close of the
24 270th calendar day after the day in which that employee
25 completes 90 days of employment with the taxpayer, the
26 tax imposed by this part for the taxable year in which that
27 employment is terminated shall be increased by an
28 amount (determined under those regulations) equal to
29 the credit allowed under subdivision (a) for that taxable
30 year and all prior taxable years attributable to qualified
31 wages paid or incurred with respect to that employee.

32 (2) (A) Paragraph (1) shall not apply to any of the
33 following:

34 (i) A termination of employment of an employee who
35 voluntarily leaves the employment of the taxpayer.

36 (ii) A termination of employment of an individual
37 who, before the close of the period referred to in
38 paragraph (1), becomes disabled to perform the services
39 of that employment, unless that disability is removed



1 before the close of that period and the taxpayer fails to
2 offer reemployment to that individual.

3 (iii) A termination of employment of an individual, if
4 it is determined under the applicable employment
5 compensation laws that the termination was due to the
6 misconduct of that individual.

7 (iv) A termination of employment of an individual due
8 to a substantial reduction in the trade or business
9 operations of the taxpayer.

10 (v) A termination of employment of an individual, if
11 that individual is replaced by other qualified employees
12 so as to create a net increase in both the number of
13 employees and the hours of employment.

14 (B) For purposes of paragraph (1), the employment
15 relationship between the taxpayer and an employee shall
16 not be treated as terminated by reason of a mere change
17 in the form of conducting the trade or business of the
18 taxpayer, if the employee continues to be employed in
19 that trade or business and the taxpayer retains a
20 substantial interest in that trade or business.

21 (3) Any increase in tax under paragraph (1) shall not
22 be treated as tax imposed by this part for purposes of
23 determining the amount of any credit allowable under
24 this part.

25 (4) At the close of the second taxable year, if the
26 taxpayer has not increased the number of its employees
27 as determined by paragraph (5) of subdivision (b), then
28 the amount of the credit previously claimed shall be
29 added to the taxpayer's net tax for the taxpayer's second
30 taxable year.

31 (e) In the case of an estate or trust, both of the
32 following apply:

33 (1) The qualified wages for any taxable year shall be
34 apportioned between the estate or trust and the
35 beneficiaries on the basis of the income of the estate or
36 trust allocable to each.

37 (2) Any beneficiary to whom any qualified wages have
38 been apportioned under paragraph (1) shall be treated
39 (for purposes of this part) as the employer with respect
40 to those wages.

(f) The credit shall be reduced by the credit allowed under Section 17053.7. The credit shall also be reduced by the federal credit allowed under Section 51 of the Internal Revenue Code.

In addition, any deduction otherwise allowed under this part for the wages or salaries paid or incurred by the taxpayer upon which the credit is based shall be reduced by the amount of the credit, prior to any reduction required by subdivision (g) or (h).

(g) In the case where the credit otherwise allowed under this section exceeds the “net tax” for the taxable year, that portion of the credit that exceeds the “net tax” may be carried over and added to the credit, if any, in succeeding years, until the credit is exhausted. The credit shall be applied first to the earliest taxable years possible.

(h) (1) The amount of credit otherwise allowed under this section and Section 17053.45, including prior year credit carryovers, that may reduce the “net tax” for the taxable year shall not exceed the amount of tax that would be imposed on the taxpayer’s business income attributed to a LAMBRA determined as if that attributed income represented all of the net income of the taxpayer subject to tax under this part.

(2) The amount of attributed income described in paragraph (1) shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101) of Part 11, modified for purposes of this section as follows:

(A) Income shall be apportioned to a LAMBRA by multiplying total business income by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(B) “The LAMBRA” shall be substituted for “this state.”

(3) The portion of any credit remaining, if any, after application of this subdivision, shall be carried over to succeeding taxable years, as if it were an amount exceeding the “net tax” for the taxable year, as provided in subdivision (g).

(i) If the taxpayer is allowed a credit pursuant to this section for qualified wages paid or incurred, only one credit shall be allowed to the taxpayer under this part with respect to any wage consisting in whole or in part of those qualified wages.

(j) This section shall remain in effect only until December 1, 2003, and as of that date is repealed. However, any unused credit may continue to be carried forward as provided in subdivision (g), until the credit is exhausted.

SEC. 6. Section 17053.49 of the Revenue and Taxation Code is amended to read:

17053.49. (a) (1) A qualified taxpayer shall be allowed a credit against the “net tax,” as defined in Section 17039, equal to 6 percent of the qualified cost of qualified property that is placed in service in this state.

(2) In the case of any qualified costs paid or incurred on or after January 1, 1994, and prior to the first taxable year of the qualified taxpayer beginning on or after January 1, 1995, the credit provided under paragraph (1) shall be claimed by the qualified taxpayer on the qualified taxpayer’s return for the first taxable year beginning on or after January 1, 1995. No credit shall be claimed under this section on a return filed for any taxable year commencing prior to the qualified taxpayer’s first taxable year beginning on or after January 1, 1995.

(b) (1) For purposes of this section, “qualified cost” means any cost that satisfies each of the following conditions:

(A) Except as otherwise provided in this subparagraph, is a cost paid or incurred by the qualified taxpayer for the construction, reconstruction, or acquisition of qualified property on or after January 1, 1994, and prior to the date this section ceases to be operative under paragraph (2) of subdivision (i). In the case of any qualified property constructed, reconstructed, or acquired by the qualified taxpayer (or any person related to the qualified taxpayer within the meaning of Section 267 or 707 of the Internal Revenue Code) pursuant to a binding contract in existence on or

1 prior to January 1, 1994, costs paid pursuant to that
2 contract shall be subject to allocation as follows: contract
3 costs shall be allocated to qualified property based on a
4 ratio of costs actually paid prior to January 1, 1994, and
5 total contract costs actually paid. "Cost paid" shall
6 include, without limitation, contractual deposits and
7 option payments. To the extent of costs allocated,
8 whether or not currently deductible or depreciable for
9 tax purposes, to a period prior to January 1, 1994, the cost
10 shall be deemed allocated to property acquired before
11 January 1, 1994, and is thus not a "qualified cost."

12 (B) Except as provided in paragraph (2) of subdivision
13 (d) and subparagraph (B) of paragraph (3) of subdivision
14 (d), is an amount upon which the qualified taxpayer has
15 paid, directly or indirectly as a separately stated contract
16 amount or as determined from the records of the
17 qualified taxpayer, sales or use tax under Part 1
18 (commencing with Section 6001).

19 (C) Is an amount properly chargeable to the capital
20 account of the qualified taxpayer.

21 (2) (A) For purposes of this subdivision, any contract
22 entered into on or after January 1, 1994, that is a successor
23 or replacement contract to a contract that was binding
24 prior to January 1, 1994, shall be treated as a binding
25 contract in existence prior to January 1, 1994.

26 (B) If a successor or replacement contract is entered
27 into on or after January 1, 1994, and the subject of the
28 successor or replacement contract relates both to
29 amounts for the construction, reconstruction, or
30 acquisition of qualified property described in the original
31 binding contract and to costs for the construction,
32 reconstruction, or acquisition of qualified property not
33 described in the original binding contract, then the
34 portion of those amounts described in the successor or
35 replacement contract that were not described in the
36 original binding contract shall not be treated as costs paid
37 or incurred pursuant to a binding contract in existence on
38 or prior to January 1, 1994, under subparagraph (A) of
39 paragraph (1).

1 (3) (A) For purposes of this section, an option
2 contract in existence prior to January 1, 1994, under which
3 a qualified taxpayer (or any other person related to the
4 qualified taxpayer within the meaning of Section 267 or
5 707 of the Internal Revenue Code) had an option to
6 acquire qualified property, shall be treated as a binding
7 contract under the rules in paragraph (2). For purposes
8 of this subparagraph, an option contract shall not include
9 an option under which the option holder will forfeit an
10 amount less than 10 percent of the fixed option price in
11 the event the option is not exercised.

12 (B) For purposes of this section, a contract shall be
13 treated as binding even if the contract is subject to a
14 condition.

15 (c) (1) For purposes of this section, “qualified
16 taxpayer” means any taxpayer or partnership engaged in
17 those lines of business described in Codes 2011 to 3999,
18 inclusive, of the Standard Industrial Classification (SIC)
19 Manual published by the United States Office of
20 Management and Budget, 1987 edition.

21 (2) In the case of any pass-through entity, the
22 determination of whether a taxpayer is a qualified
23 taxpayer under this section shall be made at the entity
24 level and any credit under this section or Section 23649
25 shall be allowed to the pass-through entity and passed
26 through to the partners or shareholders in accordance
27 with applicable provisions of Part 10 (commencing with
28 Section 17001) or Part 11 (commencing with Section
29 23001). For purposes of this paragraph, the term
30 “pass-through entity” means any partnership or S
31 corporation.

32 (3) The Franchise Tax Board may prescribe
33 regulations to carry out the purposes of this section,
34 including any regulations necessary to prevent the
35 avoidance of the effect of this section through splitups,
36 shell corporations, partnerships, tiered ownership
37 structures, sale-leaseback transactions, or otherwise.

38 (d) For purposes of this section, “qualified property”
39 means property that is described as either of the
40 following:

(1) Tangible personal property that is defined in Section 1245(a) of the Internal Revenue Code for use by a qualified taxpayer in those lines of business described in Codes 2011 to 3999, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, that is primarily used for any of the following:

(A) For the manufacturing, processing, refining, fabricating, or recycling of property, beginning at the point at which any raw materials are received by the qualified taxpayer and introduced into the process and ending at the point at which the manufacturing, processing, refining, fabricating, or recycling has altered tangible personal property to its completed form, including packaging, if required.

(B) In research and development.

(C) To maintain, repair, measure, or test any property described in this paragraph.

(D) For pollution control that meets or exceeds standards established by the state or by any local or regional governmental agency within the state.

(E) For recycling.

(2) The value of any capitalized labor costs that are directly allocable to the construction or modification of property described in paragraph (1).

(3) In the case of any qualified taxpayer engaged in manufacturing activities described in SIC Code 357 or 367, those activities related to biotechnology described in SIC Code 8731, those activities related to biopharmaceutical establishments only that are described in SIC Codes 2833 to 2836, inclusive, those activities related to space vehicles and parts described in SIC Codes 3761 to 3769, inclusive, those activities related to space satellites and communications satellites and equipment described in SIC Codes 3663 and 3812 (but only with respect to “qualified property” that is placed in service on or after January 1, 1996), or those activities related to semiconductor equipment manufacturing described in SIC Code 3559 (but only with respect to “qualified property” that is placed in service on or after

1 January 1, 1997), “qualified property” also includes the
2 following:

3 (A) Special purpose buildings and foundations that are
4 constructed or modified for use by the qualified taxpayer
5 primarily in a manufacturing, processing, refining, or
6 fabricating process, or as a research or storage facility
7 primarily used in connection with a manufacturing
8 process.

9 (B) The value of any capitalized labor costs that are
10 directly allocable to the construction or modification of
11 special purpose buildings and foundations that are used
12 primarily in the manufacturing, processing, refining, or
13 fabricating process, or as a research or storage facility
14 primarily used in connection with a manufacturing
15 process.

16 (C) (i) For purposes of this paragraph, “special
17 purpose building and foundation” means only a building
18 and the foundation immediately underlying the building
19 that is specifically designed and constructed or
20 reconstructed for the installation, operation, and use of
21 specific machinery and equipment with a special
22 purpose, which machinery and equipment, after
23 installation, will become affixed to or a fixture of the real
24 property, and the construction or reconstruction of which
25 is specifically designed and used exclusively for the
26 specified purposes as set forth in subparagraph (A)
27 (“qualified purpose”).

28 (ii) A building is specifically designed and constructed
29 or modified for a qualified purpose if it is not economic to
30 design and construct the building for the intended
31 purpose and then use the structure for a different
32 purpose.

33 (iii) For purposes of clause (i) and clause (vi), a
34 building is used exclusively for a qualified purpose only if
35 its use does not include a use for which it was not
36 specifically designed and constructed or modified.
37 Incidental use of a building for nonqualified purposes
38 does not preclude the building from being a special
39 purpose building. “Incidental use” means a use which is
40 both related and subordinate to the qualified purpose. It

1 will be conclusively presumed that a use is not
2 subordinate if more than one-third of the total usable
3 volume of the building is devoted to a use which is not a
4 qualified purpose.

5 (iv) In the event an entire building does not qualify as
6 a special purpose building, a taxpayer may establish that
7 a portion of a building, and the foundation immediately
8 underlying the portion, qualifies for treatment as a special
9 purpose building and foundation if the portion satisfies all
10 of the definitional provisions in this subparagraph.

11 (v) To the extent that a building is not a special
12 purpose building as defined above, but a portion of the
13 building qualifies for treatment as a special purpose
14 building, then all equipment which exclusively supports
15 the qualified purpose occurring within that portion and
16 which would qualify as Internal Revenue Code Section
17 1245 property if it were not a fixture or affixed to the
18 building shall be treated as a cost of the portion of the
19 building which qualifies for treatment as a special
20 purpose building.

21 (vi) Buildings and foundations which do not meet the
22 definition of a special purpose building and foundation set
23 forth above include, but are not limited to: buildings
24 designed and constructed or reconstructed principally to
25 function as a general purpose manufacturing, industrial,
26 or commercial building; research facilities that are used
27 primarily prior to or after, or prior to and after, the
28 manufacturing process; or storage facilities that are used
29 primarily prior to or after, or prior to and after,
30 completion of the manufacturing process. A research
31 facility shall not be considered to be used primarily prior
32 to or after, or prior to and after, the manufacturing
33 process if its purpose and use relate exclusively to the
34 development and regulatory approval of the
35 manufacturing process for specific biopharmaceutical
36 products. A research facility which is used primarily in
37 connection with the discovery of an organism from which
38 a biopharmaceutical product or process is developed does
39 not meet the requirements of the preceding sentence.



(4) Subject to the provisions in subparagraph (B) of paragraph (1) of subdivision (b), qualified property also includes computer software that is primarily used for those purposes set forth in paragraph (1) of this subdivision.

(5) Qualified property does not include any of the following:

(A) Furniture.

(B) Facilities used for warehousing purposes after completion of the manufacturing process.

(C) Inventory.

(D) Equipment used in the extraction process.

(E) Equipment used to store finished products that have completed the manufacturing process.

(F) Any tangible personal property that is used in administration, general management, or marketing.

(G) Any vehicle for which a credit is claimed pursuant to Section 17052.11 or 23603.

(e) For purposes of this section:

(1) “Biopharmaceutical activities” means those activities which use organisms or materials derived from organisms, and their cellular, subcellular, or molecular components, in order to provide pharmaceutical products for human or animal therapeutics and diagnostics. Biopharmaceutical activities make use of living organisms to make commercial products, as opposed to pharmaceutical activities which make use of chemical compounds to produce commercial products.

(2) “Fabricating” means to make, build, create, produce, or assemble components or property to work in a new or different manner.

(3) “Manufacturing” means the activity of converting or conditioning property by changing the form, composition, quality, or character of the property for ultimate sale at retail or use in the manufacturing of a product to be ultimately sold at retail. Manufacturing includes any improvements to tangible personal property that result in a greater service life or greater functionality than that of the original property.

1 (4) “Other biotechnology activities” means activities
2 consisting of the application of recombinant DNA
3 technology to produce commercial products, as well as
4 activities regarding pharmaceutical delivery systems
5 designed to provide a measure of control over the rate,
6 duration, and site of pharmaceutical delivery.

7 (5) “Primarily” means tangible personal property
8 used 50 percent or more of the time in an activity
9 described in subdivision (d).

10 (6) “Process” means the period beginning at the point
11 at which any raw materials are received by the qualified
12 taxpayer and introduced into the manufacturing,
13 processing, refining, fabricating, or recycling activity of
14 the qualified taxpayer and ending at the point at which
15 the manufacturing, processing, refining, fabricating, or
16 recycling activity of the qualified taxpayer has altered
17 tangible personal property to its completed form,
18 including packaging, if required. Raw materials shall be
19 considered to have been introduced into the process
20 when the raw materials are stored on the same premises
21 where the qualified taxpayer’s manufacturing,
22 processing, refining, or recycling activity is conducted.
23 Raw materials that are stored on premises other than
24 where the qualified taxpayer’s manufacturing,
25 processing, refining, fabricating, or recycling activity is
26 conducted, shall not be considered to have been
27 introduced into the manufacturing, processing, refining,
28 fabricating, or recycling process.

29 (7) “Processing” means the physical application of the
30 materials and labor necessary to modify or change the
31 characteristics of property.

32 (8) “Refining” means the process of converting a
33 natural resource to an intermediate or finished product.

34 (9) “Research and development” means those
35 activities that are described in Section 174 of the Internal
36 Revenue Code or in any regulations thereunder.

37 (10) “Small business” means a qualified taxpayer that
38 meets any of the following requirements during the
39 taxable year for which the credit is allowed:



1 (A) Has gross receipts of less than fifty million dollars
2 (\$50,000,000).

3 (B) Has net assets of less than fifty million dollars
4 (\$50,000,000).

5 (C) Has a total credit of less than one million dollars
6 (\$1,000,000).

7 (D) For taxable years beginning on or after January 1,
8 1997, is engaged in biopharmaceutical activities or other
9 biotechnology activities that are described in Codes 2833
10 to 2836, inclusive, of the Standard Industrial Classification
11 (SIC) Manual published by the United States Office of
12 Management and Budget, 1987 edition, and has not
13 received regulatory approval for any product from the
14 United States Food and Drug Administration.

15 (f) The credit allowed under subdivision (a) shall
16 apply to qualified property that is acquired by or subject
17 to lease by a qualified taxpayer, subject to the following
18 special rules:

19 (1) A lessor of qualified property, irrespective of
20 whether the lessor is a qualified taxpayer, shall not be
21 allowed the credit provided under subdivision (a) with
22 respect to any qualified property leased to another
23 qualified taxpayer.

24 (2) For purposes of paragraphs (2) and (3) of
25 subdivision (b), “binding contract” shall include any
26 lease agreement with respect to the qualified property.

27 (3) (A) For purposes of determining the qualified
28 cost paid or incurred by a lessee in any leasing transaction
29 that is not treated as a sale under Part 1 (commencing
30 with Section 6001), the following rules shall apply:

31 (i) Except as provided by subparagraph (C) of this
32 paragraph, subparagraphs (A) and (C) of paragraph (1)
33 of subdivision (b) shall not apply.

34 (ii) Except as provided in subparagraph (B) and
35 clause (iii), the “qualified cost” upon which the lessee
36 shall compute the credit provided under this section shall
37 be equal to the original cost to the lessor (within the
38 meaning of Section 18031) of the qualified property that
39 is the subject of the lease.

1 (iii) Except as provided in clause (iv), the
2 requirement of subparagraph (B) of paragraph (1) of
3 subdivision (b) shall be treated as satisfied only if the
4 lessor has made a timely election under either Section
5 6094.1 or subdivision (d) of Section 6244 and has paid sales
6 tax reimbursement or use tax measured by the purchase
7 price of the qualified property (within the meaning of
8 paragraph (5) of subdivision (g) of Section 6006). For
9 purposes of this subdivision and clause (iv), the amount
10 of original cost to the lessor which may be taken into
11 account under clause (ii) shall not exceed the purchase
12 price upon which sales tax reimbursement or use tax has
13 been paid under the preceding sentence or under clause
14 (iv).

15 (iv) With respect to leases entered into between
16 January 1, 1994, and the effective date of this clause, the
17 lessor may elect to pay use tax measured by the purchase
18 price of the property by reporting and paying the tax with
19 the return of the lessor for the fourth calendar quarter of
20 1994. In computing the use tax under the preceding
21 sentence, a credit shall be allowed under Part 1
22 (commencing with Section 6001) for all sales or use tax
23 previously paid on the lease.

24 (B) For purposes of applying subparagraph (A) only,
25 the following special rules shall apply:

26 (i) The original cost to the lessor of the qualified
27 property shall be reduced by the amount of any original
28 cost of that property that was taken into account by any
29 predecessor lessee in computing the credit allowable
30 under this section.

31 (ii) Clause (i) shall not apply in any case where the
32 predecessor lessee was required to recapture the credit
33 provided under this section pursuant to the provisions of
34 subdivision (g).

35 (iii) For purposes of this section only, in any case
36 where a successor lessor has acquired qualified property
37 from a predecessor lessor in a transaction not treated as
38 a sale under Part 1 (commencing with Section 6001), the
39 original cost to the successor lessor of the qualified
40 property shall be reduced by the amount of the original

1 cost of the qualified property that was taken into account
2 by any lessee of the predecessor lessor in computing the
3 credit allowable under this section.

4 (C) In determining the original cost of any qualified
5 property under this paragraph, only amounts paid or
6 incurred by the lessor on or after January 1, 1994, and
7 prior to the date this section ceases to be operative under
8 paragraph (2) of subdivision (i), shall be taken into
9 account. In the case of any qualified property
10 constructed, reconstructed, or acquired by a lessor
11 pursuant to a binding contract in existence on or prior to
12 January 1, 1994, the allocation rule specified in
13 subparagraph (A) of paragraph (1) of subdivision (b)
14 shall apply in determining the original cost to the lessor
15 of qualified property.

16 (D) Notwithstanding subparagraph (A), in the case of
17 any leasing transaction for which the lessee is allowed the
18 credit under this section and thereafter the lessee (or any
19 party related to the lessee within the meaning of Section
20 267 or 318 of the Internal Revenue Code) acquires the
21 qualified property from the lessor (or any successor
22 lessor) within one year from the date the qualified
23 property is first used by the lessee under the terms of the
24 lease, the lessee's (or related party's) acquisition of the
25 qualified property from the lessor (or successor lessor)
26 shall be treated as a disposition by the lessee of the
27 qualified property that was subject to the lease under
28 subdivision (g).

29 (4) For purposes of determining the qualified cost
30 paid or incurred by a lessee in any leasing transaction that
31 is treated as a sale under Part 1 (commencing with
32 Section 6001), the following rules shall apply:

33 (A) Subparagraph (A) of paragraph (1) of subdivision
34 (b) shall be applied by substituting the term "purchase"
35 for the term "construction, reconstruction, or
36 acquisition."

37 (B) Subparagraph (C) of paragraph (1) of subdivision
38 (b) shall apply.

39 (C) The requirement of subparagraph (B) of
40 paragraph (1) of subdivision (b) shall be treated as

1 satisfied at the time that either the lessor or the qualified
2 taxpayer pays sales or use tax under Part 1 (commencing
3 with Section 6001).

4 (5) (A) In the case of any leasing transaction
5 described in paragraph (3), the lessor shall provide a
6 statement to the lessee specifying the amount of the
7 lessor's original cost of the qualified property and the
8 amount of that cost upon which a sales or use tax was paid
9 within 45 days after the close of the lessee's taxable year
10 in which the credit is allowable to the lessee under this
11 section.

12 (B) The statement required under subparagraph (A)
13 shall be made available to the Franchise Tax Board upon
14 request.

15 (g) No credit shall be allowed if the qualified property
16 is removed from the state, is disposed of to an unrelated
17 party, or is used for any purpose not qualifying for the
18 credit provided in this section in the same taxable year in
19 which the qualified property is first placed in service in
20 this state. If any qualified property for which a credit is
21 allowed pursuant to this section is thereafter removed
22 from this state, disposed of to an unrelated party, or used
23 for any purpose not qualifying for the credit provided in
24 this section within one year from the date the qualified
25 property is first placed in service in this state, the amount
26 of the credit allowed by this section for that qualified
27 property shall be recaptured by adding that credit
28 amount to the net tax of the qualified taxpayer for the
29 taxable year in which the qualified property is disposed
30 of, removed, or put to an ineligible use.

31 (h) In the case where the credit allowed by this section
32 exceeds the "net tax," the excess may be carried over to
33 reduce the "net tax" in the following year, and
34 succeeding years as follows:

35 (1) Except as provided in paragraph (2), for the seven
36 succeeding years if necessary, until the credit is
37 exhausted.

38 (2) In the case of a small business, for the nine
39 succeeding years, if necessary, until the credit is
40 exhausted.

1 (i) (1) This section shall remain in effect until the
2 date specified in paragraph (2), on which date this section
3 shall cease to be operative, and as of that date is repealed.
4 However, any unused credit may continue to be carried
5 forward, as provided in subdivision (h), until the credit
6 is exhausted.

7 (2) (A) This section shall cease to be operative on
8 January 1, 2001, or on January 1 of the earliest year
9 thereafter, if the total employment in this state, as
10 determined by the Employment Development
11 Department on the preceding January 1, does not exceed
12 by 100,000 jobs the total employment in this state on
13 January 1, 1994. The department shall report to the
14 Legislature annually with respect to the determination
15 required by the preceding sentence.

16 (B) For purposes of this paragraph, “total
17 employment” means the total employment in the
18 manufacturing sector, excluding employment in the
19 aerospace sector.

20 (j) The amendments made by the act adding this
21 subdivision shall be operative for taxable years beginning
22 on or after January 1, 1997, except as provided in
23 paragraph (3) of subdivision (d).

24 SEC. 7. Section 17062 of the Revenue and Taxation
25 Code is amended to read:

26 17062. (a) In addition to the other taxes imposed by
27 this part, there is hereby imposed for each taxable year,
28 a tax equal to the excess, if any, of—

29 (1) The tentative minimum tax for the taxable year,
30 over

31 (2) The regular tax for the taxable year.

32 (b) For purposes of this chapter, each of the following
33 shall apply:

34 (1) The tentative minimum tax shall be computed in
35 accordance with Sections 55 to 59, inclusive, of the
36 Internal Revenue Code, except as otherwise provided in
37 this part.

38 (2) The regular tax shall be the amount of tax imposed
39 by Section 17041 or 17048, before reduction for any credits
40 against the tax, less any amount imposed under

1 paragraph (1) of subdivision (d) and paragraph (1) of
2 subdivision (e) of Section 17560.

3 (3) (A) The provisions of Section 55(b)(1) of the
4 Internal Revenue Code shall be modified to provide that
5 the tentative minimum tax for the taxable year shall be
6 equal to the following percent of so much of the
7 alternative minimum taxable income for the taxable year
8 as exceeds the exemption amount, before reduction for
9 any credits against the tax:

10 (i) For any taxable year beginning on or after January
11 1, 1991, and before January 1, 1996, 8.5 percent.

12 (ii) For any taxable year beginning on or after January
13 1, 1996, 7 percent.

14 (B) In the case of a nonresident or part-year resident,
15 the tentative minimum tax shall be computed as if the
16 nonresident or part-year resident were a resident for the
17 entire year multiplied by the ratio of California adjusted
18 gross income (as modified for purposes of this chapter) to
19 total adjusted gross income from all sources (as modified
20 for purposes of this chapter). For purposes of computing
21 the tax under subparagraph (A) and gross income from
22 all sources, the net operating loss deduction provided in
23 Section 56(d) of the Internal Revenue Code shall be
24 computed as if the taxpayer were a resident for all prior
25 years.

26 (C) For purposes of this section, the term “California
27 adjusted gross income” includes each of the following:

28 (i) For any period during which the taxpayer was a
29 resident of this state (as defined by Section 17014), all
30 items of adjusted gross income (as modified for purposes
31 of this chapter), regardless of source.

32 (ii) For any period during which the taxpayer was not
33 a resident of this state, only those items of adjusted gross
34 income (as modified for purposes of this chapter) which
35 were derived from sources within this state, determined
36 in accordance with Chapter 11 (commencing with
37 Section 17951).

38 (4) The provisions of Section 55(b)(2) of the Internal
39 Revenue Code, relating to alternative minimum taxable
40 income, shall be modified to provide that alternative

1 minimum taxable income shall not include the income,
2 adjustments, and items of tax preference attributable to
3 any trade or business of a qualified taxpayer.

4 (A) For purposes of this paragraph, “qualified
5 taxpayer” means a taxpayer who meets both of the
6 following:

7 (i) Is the owner of, or has an ownership interest in, a
8 trade or business.

9 (ii) Has aggregate gross receipts, less returns and
10 allowances, of less than one million dollars (\$1,000,000)
11 during the taxable year from all trades or businesses of
12 which the taxpayer is the owner or has an ownership
13 interest, in the amount of that taxpayer’s proportionate
14 interest in each trade or business.

15 (B) For purposes of this paragraph, “aggregate gross
16 receipts, less returns and allowances” means the sum of
17 the gross receipts of the trades or businesses which the
18 taxpayer owns and the proportionate interest of the gross
19 receipts of the trades or businesses which the taxpayer
20 owns and of pass-through entities in which the taxpayer
21 holds an interest.

22 (C) For purposes of this paragraph, “gross receipts,
23 less returns and allowances” means the sum of the gross
24 receipts from the production of business income, as
25 defined in subdivision (a) of Section 25120, and the gross
26 receipts from the production of nonbusiness income, as
27 defined in subdivision (d) of Section 25120.

28 (D) For purposes of this paragraph, “proportionate
29 interest” means:

30 (i) In the case of a pass-through entity which reports
31 a profit for the taxable or income year, the taxpayer’s
32 profits interest in the entity at the end of the taxpayer’s
33 taxable year.

34 (ii) In the case of pass-through entity which reports a
35 loss for the taxable or income year, the taxpayer’s loss
36 interest in the entity at the end of the taxpayer’s taxable
37 year.

38 (iii) In the case of a pass-through entity which is sold
39 or liquidates during the taxable or income year, the

1 taxpayer's capital account interest in the entity at the
2 time of the sale or liquidation.

3 (E) (i) For purposes of this paragraph,
4 "proportionate interest" includes an interest in a
5 pass-through entity.

6 (ii) For purposes of this paragraph, "pass-through
7 entity" means any of the following:

8 (I) A partnership, as defined by Section 17008.

9 (II) An S corporation, as provided in Chapter 4.5
10 (commencing with Section 23800) of Part 11.

11 (III) A regulated investment company, as provided in
12 Section 24871.

13 (IV) A real estate investment trust, as provided in
14 Section 24872.

15 (V) A real estate mortgage investment conduit, as
16 provided in Section 24874.

17 (c) (1) Section 56(b)(1)(E) of the Internal Revenue
18 Code, relating to standard deduction and deduction for
19 personal exemptions not allowed, is modified, for
20 purposes of this part, to deny the standard deduction
21 allowed by Section 17073.5.

22 (2) *Section 56(b)(3) of the Internal Revenue Code,*
23 *relating to treatment of incentive stock options, shall be*
24 *modified to additionally provide the following:*

25 (A) *Section 421 of the Internal Revenue Code shall not*
26 *apply to the transfer of stock acquired pursuant to the*
27 *exercise of a California qualified stock option under*
28 *Section 17502.*

29 (B) *Section 422(c)(2) of the Internal Revenue Code*
30 *shall apply in any case where the disposition and inclusion*
31 *of a California qualified stock option for purposes of this*
32 *chapter are within the same taxable year and that section*
33 *shall not apply in any other case.*

34 (C) *The adjusted basis of any stock acquired by the*
35 *exercise of a California qualified stock option shall be*
36 *determined on the basis of the treatment prescribed by*
37 *this paragraph.*

38 (3) The provisions of Section 56(h) of the Internal
39 Revenue Code, relating to adjustment based on energy
40 preferences, shall not apply.

(d) The provisions of Section 57(a)(5) of the Internal Revenue Code, relating to tax-exempt interest shall not apply.

(e) The last two sentences of Section 57(a)(6)(B) of the Internal Revenue Code, relating to tangible personal property, shall not apply.

(f) Section 57(a) of the Internal Revenue Code, relating to items of tax preference, is modified to include as an item of tax preference an amount equal to one-half of the amount excluded from gross income for the taxable year under Section 18152.5.

(g) The provisions of Section 59(a) of the Internal Revenue Code, relating to the alternative minimum tax foreign tax credit, shall not apply.

SEC. 8. Section 17220 of the Revenue and Taxation Code is amended to read:

17220. (a) Section 164(a)(3) of the Internal Revenue Code, relating to the deductibility of state, local, and foreign income, war profits, and excess profits taxes, shall not apply.

(b) In addition to the provisions of Section 164(c) of the Internal Revenue Code, relating to deduction denied in case of certain taxes, no deduction shall be allowed for any tax imposed under Chapter 10.5 (commencing with Section 17935), Chapter 10.6 (commencing with Section 17941), or Chapter 10.7 (commencing with Section 17951) of this part or under Part 11 (commencing with Section 23001).

SEC. 9. *Section 17502 of the Revenue and Taxation Code is amended to read:*

17502. (a) In addition to the application of Part II (commencing with Section 421) of Subchapter D of Chapter 1 of Subtitle A of the Internal Revenue Code, relating to certain stock options, paragraphs (1), (2), and (3) of Section 421(a) of the Internal Revenue Code shall also apply to any ~~other stock option that is exercised by an individual whose earned income for the taxable year does not exceed forty thousand dollars (\$40,000)~~ *California qualified stock option that is granted to an individual whose earned income from the corporation granting the*

1 *California qualified stock option for the taxable year in*
2 *which that option is exercised does not exceed forty*
3 *thousand dollars (\$40,000). In the event that the option*
4 *does not meet the necessary qualifications, the option*
5 *shall be treated as a nonqualified stock option.*

6 (b) For purposes of this section, “California qualified
7 stock option” means a stock option *that is issued and*
8 *exercised pursuant to this section and that is designated*
9 *by the corporation issuing the option as a California*
10 *qualified stock option at the time the option is granted.*

11 (c) (1) This section shall apply only to those stock
12 options that are issued on or after January 1, 1997, and
13 before January 1, 2002, by a corporation to its employee
14 and are exercised by the employee, while employed by
15 the corporation that issued those stock options (or within
16 three months thereof, or within one year thereof if
17 permanently and totally disabled as defined in Section
18 22(e)(3) of the Internal Revenue Code), during the
19 taxable year with respect to any class of shares, or
20 combination thereof, issued by the corporation, to the
21 extent that the number of shares transferable by the
22 exercise of the options does not exceed a total of 1,000 and
23 have a combined fair market value of less than one
24 hundred thousand dollars (\$100,000). The combined fair
25 market value of any stock shall be determined as of the
26 time the option with respect to that stock is granted.

27 (2) Paragraph (1) shall be applied by taking options
28 into account in the order in which they were granted.

29 (d) In the case of a California qualified stock option, no
30 amount shall be included in the gross income of the
31 employee until such time as the disposition of the option
32 (or the stock acquired upon exercise of the option).

33 No deduction shall be allowed under Section 162 of the
34 Internal Revenue Code to the employer on the grant *or*
35 *exercise* of a California qualified stock option.

36 (e) Subdivision (d) shall not apply to any stock option
37 for which an election has been made under Section 83(b)
38 of the Internal Revenue Code, relating to election to
39 include in gross income in year of transfer.

1 SEC. 9.5. Section 17570 of the Revenue and Taxation
2 Code is amended to read:

3 17570. (a) For each taxable year beginning on or
4 after January 1, 1997, Section 475 of the Internal Revenue
5 Code, relating to mark to market accounting method for
6 securities dealers, as added by Section 13223 of the
7 Revenue Reconciliation Act of 1993 (P.L. 103-66), shall
8 apply, except as otherwise provided.

9 (b) Section 13233(c)(2)(C) of the Revenue
10 Reconciliation Act of 1993 (P.L. 103-66), relating to the
11 effective date for changes in the mark to market
12 accounting method for securities dealers, is modified to
13 provide that the amount taken into account under
14 Section 481 of the Internal Revenue Code of 1986 shall be
15 taken into account ratably over the five-taxable-year
16 period beginning with the first taxable year beginning on
17 or after January 1, 1997.

18 SEC. 10. Section 18402 of the Revenue and Taxation
19 Code is amended to read:

20 18402. (a) Except where the context otherwise
21 requires, the general provisions and definitions provided
22 in Chapter 1 (commencing with Section 17001) of Part 10
23 and in Chapter 1 (commencing with Section 23001) of
24 Part 11 shall apply to this part.

25 (b) For purposes of this part, “person” includes an
26 individual, fiduciary, partnership, limited liability
27 company, corporation, or organization exempt from
28 taxation under Section 23701.

29 (c) (1) Whenever provisions of this part are applied
30 in connection with Part 10 (commencing with Section
31 17001), the terms “taxpayer,” “corporation” and “taxable
32 year” have the same meaning as defined in Chapter 1
33 (commencing with Section 17001) of Part 10.

34 (2) Whenever provisions of this part are applied in
35 connection with Part 11 (commencing with Section
36 23001), the terms “taxpayer,” “corporation,” “income
37 year,” and “taxable year” have the same meaning as
38 defined in Article 2 (commencing with Section 23030) of
39 Chapter 1 of Part 11.

1 SEC. 11. Section 18604 of the Revenue and Taxation
2 Code is amended to read:

3 18604. (a) The Franchise Tax Board may grant a
4 reasonable extension of time for filing any return,
5 declaration, statement, or other document required by
6 Part 11 (commencing with Section 23001), in the manner
7 and form as the Franchise Tax Board may determine. No
8 extension or extensions shall aggregate more than seven
9 months from the due date for filing the return.

10 (b) An extension for the filing of the return of taxes
11 imposed by Part 11 (commencing with Section 23001)
12 shall be allowed any corporation if, in the manner and at
13 the time as the Franchise Tax Board may prescribe, that
14 corporation pays, on or before the date prescribed for
15 payment of the tax, the amount properly estimated as
16 provided in Section 19023 or 19024.

17 (c) An extension of time granted pursuant to this
18 section is not an extension of time for payment of tax
19 required to be paid on or before the due date of the return
20 without regard to extension. Underpayment of tax
21 penalties shall be imposed as provided by law without
22 regard to any extension granted under this section.

23 SEC. 12. Section 18606 of the Revenue and Taxation
24 Code is amended to read:

25 18606. (a) In cases where receivers, trustees in a case
26 under Title 11 of the United States Code, or assignees are
27 operating the property or business of a corporation those
28 receivers, trustees, or assignees shall make returns for
29 that corporation in the same manner and form as that
30 corporation is required to make a return.

31 (b) Any tax due on the basis of returns made by
32 receivers, trustees, or assignees shall be collected in the
33 same manner as if collected from the corporation of
34 whose business or property they have custody and
35 control.

36 SEC. 13. Section 18621.5 of the Revenue and Taxation
37 Code is amended to read:

38 18621.5. (a) Any return, declaration, statement, or
39 other document required to be made under this part that
40 is filed using electronic technology shall be in a form as

1 the Franchise Tax Board may prescribe and is not
2 complete, and therefore not filed, unless an electronic
3 filing declaration is signed by the taxpayer, in accordance
4 with Section 18621 in the case of individuals, subdivision
5 (a) of Section 18505 in the case of estates or trusts,
6 corporations, or limited liability companies classified as
7 corporations for California income tax purposes,
8 subdivision (a) of Section 18633 in the case of a
9 partnership, or Section 18633.5 in the case of limited
10 liability companies classified as partnerships for
11 California income tax purposes. The Franchise Tax Board
12 may prescribe forms and instructions for requiring the
13 electronic filing declaration to be retained by the
14 preparer or taxpayer and may require the declaration to
15 be furnished to the Franchise Tax Board upon request.

16 (b) Notwithstanding any other provision of law, any
17 return, declaration, statement, or other document
18 otherwise required to be signed that is filed in a
19 traditional medium and captured using electronic
20 imaging technology shall be deemed to be a valid original
21 document upon reproduction to paper form by the
22 Franchise Tax Board.

23 (c) Notwithstanding any other law, any return,
24 declaration, statement, or other document otherwise
25 required to be signed that is filed by the taxpayer using
26 electronic technology in a form as required by the
27 Franchise Tax Board shall be deemed to be a signed, valid
28 original document, including upon reproduction to paper
29 form by the Franchise Tax Board.

30 (d) “Electronic imaging technology” means a system
31 of microphotography, optical disk, or reproduction by
32 other technique that does not permit additions, deletions,
33 or changes to the original document. The system may
34 include, but is not limited to, any magnetic media or other
35 machine readable form.

36 (e) “Traditional medium” means any return,
37 declaration, statement, or other document required to be
38 made pursuant to this article other than those made using
39 electronic imaging technology.

1 (f) “Electronic technology” includes, but is not
2 limited to, computer modem, magnetic media, optical
3 disk, facsimile machine, or telephone.

4 SEC. 14. Section 18633 of the Revenue and Taxation
5 Code is amended to read:

6 18633. (a) (1) Every partnership, within three
7 months and 15 days after the close of its taxable year, shall
8 make a return for that taxable year, stating specifically
9 the items of gross income and the deductions allowed by
10 Part 10 (commencing with Section 17001). Except as
11 otherwise provided in Section 18621.5, the return shall
12 include the names, addresses, and taxpayer identification
13 numbers of the persons, whether residents or
14 nonresidents, who would be entitled to share in the net
15 income if distributed and the amount of the distributive
16 share of each person. The return shall contain or be
17 verified by a written declaration that it is made under the
18 penalties of perjury, signed by one of the partners.

19 (2) In addition to returns required by paragraph (1),
20 every limited partnership subject to the tax imposed by
21 subdivision (b) of Section 17935 or 23081, within three
22 months and 15 days after the close of its taxable year, shall
23 make a return for that year. The Franchise Tax Board
24 shall prescribe the manner and extent to which the
25 information identified in paragraph (1) shall be included
26 with the return required by this paragraph.

27 (b) Each partnership required to file a return under
28 subdivision (a) for any taxable year shall (on or before the
29 day on which the return for that taxable year was
30 required to be filed) furnish to each person who is a
31 partner or who holds an interest in that partnership as a
32 nominee for another person at any time during that
33 taxable year a copy of that information required to be
34 shown on that return as may be required by regulations.

35 (c) Any person who holds an interest in a partnership
36 as a nominee for another person shall do both of the
37 following:

38 (1) Furnish to the partnership, in the manner
39 prescribed by the Franchise Tax Board, the name,
40 address, and taxpayer identification number of that other

1 person, and any other information for that taxable year as
2 the Franchise Tax Board may by form and regulation
3 prescribe.

4 (2) Furnish to that other person, in the manner
5 prescribed by the Franchise Tax Board, the information
6 provided by that partnership under subdivision (b).

7 (d) The provisions of Section 6031(d) of the Internal
8 Revenue Code, relating to the separate statement of
9 items of unrelated business taxable income, shall apply.

10 (e) The amendments made to this section by the act
11 adding this subdivision shall apply to returns required to
12 be filed under subdivision (a) after the effective date of
13 that act.

14 (f) The amendments made to this section by the act
15 adding this subdivision shall apply to returns required to
16 be filed on or after January 1, 1998.

17 SEC. 15. Section 18633.5 of the Revenue and Taxation
18 Code is amended to read:

19 18633.5. (a) Every limited liability company which is
20 classified as a partnership for California tax purposes that
21 is doing business in this state, organized in this state, or
22 registered with the Secretary of State shall file its return
23 within three months and 15 days after the close of its
24 taxable or income year, shall make a return for that
25 taxable year, stating specifically the items of gross income
26 and the deductions allowed by Part 10 (commencing with
27 Section 17001). The return shall include the names,
28 addresses, and taxpayer identification numbers of the
29 persons, whether residents or nonresidents, who would
30 be entitled to share in the net income if distributed and
31 the amount of the distributive share of each person. The
32 return shall contain or be verified by a written
33 declaration that it is made under the penalties of perjury,
34 signed by one of the limited liability company members.
35 In the case of a limited liability company subject to the tax
36 imposed by subdivision (b) of Section 17941 or 23091, the
37 Franchise Tax Board shall prescribe the manner and
38 extent to which the information identified in this
39 paragraph shall be included with the return required by
40 this paragraph.

1 (b) Each limited liability company required to file a
2 return under subdivision (a) for any limited liability
3 company taxable or income year shall, on or before the
4 day on which the return for that taxable or income year
5 was required to be filed, furnish to each person who holds
6 an interest in that limited liability company at any time
7 during that taxable or income year a copy of that
8 information required to be shown on that return as may
9 be required by forms and instructions prescribed by the
10 Franchise Tax Board.

11 (c) Any person who holds an interest in a limited
12 liability company as a nominee for another person shall
13 do both of the following:

14 (1) Furnish to the limited liability company, in the
15 manner prescribed by the Franchise Tax Board, the
16 name, address, and taxpayer identification number of
17 that person, and any other information for that taxable or
18 income year as the Franchise Tax Board may prescribe by
19 forms and instructions.

20 (2) Furnish to that other person, in the manner
21 prescribed by the Franchise Tax Board, the information
22 provided by that limited liability company under
23 subdivision (b).

24 (d) The provisions of Section 6031(d) of the Internal
25 Revenue Code, relating to the separate statement of
26 items of unrelated business taxable income, shall apply.

27 (e) (1) A limited liability company shall file with its
28 return required under subdivision (a), in the form
29 required by the Franchise Tax Board, the agreement of
30 each nonresident member to file a return pursuant to
31 Section 18501, to make timely payment of all taxes
32 imposed on the member by this state with respect to the
33 income of the limited liability company, and to be subject
34 to personal jurisdiction in this state for purposes of the
35 collection of income taxes, together with related interest
36 and penalties, imposed on the member by this state with
37 respect to the income of the limited liability company. If
38 the limited liability company fails timely to file the
39 agreements on behalf of each of its nonresident members,
40 then the limited liability company shall, at the time set

1 forth in subdivision (f), pay to this state on behalf of each
2 nonresident member of whom an agreement has not
3 been timely filed an amount equal to the highest marginal
4 tax rate in effect under Section 17041 in the case of
5 members which are individuals, estates, or trusts, and
6 Section 23151 in the case of members which are
7 corporations, multiplied by the amount of the member's
8 distributive share of the income source to the state
9 reflected on the limited liability company's return for the
10 taxable period. A limited liability company shall be
11 entitled to recover the payment made from the member
12 on whose behalf the payment was made.

13 (2) If a limited liability company fails to attach the
14 agreement or to timely pay the payment required by
15 paragraph (1), the payment shall be considered the tax
16 of the limited liability company for purposes of the
17 penalty prescribed by Section 19132 and interest
18 prescribed by Section 19101 for failure to timely pay tax.
19 Payment of the penalty and interest imposed on the
20 limited liability company for failure to timely pay the
21 amount required by this subdivision shall extinguish the
22 liability of a nonresident member for the penalty and
23 interest for failure to make timely payment of all taxes
24 imposed on that member by this state with respect to the
25 income of the limited liability company.

26 (3) No penalty or interest shall be imposed on the
27 limited liability company under paragraph (2) if the
28 nonresident member timely files and pays all taxes
29 imposed on the member by this state with respect to the
30 income of the limited liability company.

31 (f) Any agreement of a nonresident member required
32 to be filed pursuant to subdivision (e) shall be filed at
33 either of the following times:

34 (1) The time the annual return is required to be filed
35 pursuant to this section for the first taxable period for
36 which the limited liability company became subject to tax
37 pursuant to Chapter 1.6 (commencing with Section
38 23091).

39 (2) The time the annual return is required to be filed
40 pursuant to this section for any taxable period in which

1 the limited liability company had a nonresident member
2 on whose behalf such an agreement has not been
3 previously filed.

4 (g) Any amount paid by the limited liability company
5 to this state pursuant to paragraph (1) of subdivision (e)
6 shall be considered to be a payment by the member on
7 account of the income tax imposed by this state on the
8 member for the taxable period.

9 (h) Every limited liability company that is classified as
10 a corporation for California tax purposes shall be subject
11 to the requirement to file a tax return under the
12 provisions of Part 10.2 (commencing with Section 18401)
13 and subject to the applicable taxes imposed by Part 11
14 (commencing with Section 23001), including Section
15 23221, relating to the prepayment of the minimum tax to
16 the Secretary of State.

17 (i) The amendments made to this section by the act
18 adding this subdivision shall apply to returns required to
19 be filed on or after January 1, 1998.

20 SEC. 16. Section 18637 of the Revenue and Taxation
21 Code is amended to read:

22 18637. (a) Every individual, partnership, limited
23 liability company, corporation, joint stock company or
24 association, insurance company, business trust, or
25 so-called Massachusetts trust, engaged in a trade or
26 business in this state and making payment in the course
27 of the trade or business to another person, including
28 lessees or mortgagors of real or personal property,
29 fiduciaries, employers, and all officers and employees of
30 this state or any political subdivision of this state, or any
31 city organized under a freeholder's charter, or any
32 political body not a subdivision or agency of the state,
33 having the control, receipt, custody, disposal, or payment
34 of interest (other than interest coupons payable to
35 bearer), dividends, rent, salaries, wages, premiums,
36 annuities, compensations, remunerations, emoluments,
37 or other fixed or determinable annual or periodical gains,
38 profits, and income amounting to six hundred dollars
39 (\$600) or over, paid or payable during any year to any
40 taxpayer, shall make a complete return to the Franchise

1 Tax Board, which shall contain or be verified by a written
2 declaration that it is made under the penalties of perjury,
3 under the regulations and in the form and manner and to
4 the extent as may be prescribed by it.

5 (b) For purposes of subdivision (a), “trade or
6 business” includes the activities of nonprofit
7 organizations.

8 (c) In lieu of an information return required by
9 subdivision (a), the Franchise Tax Board may require
10 that a copy of the federal information return be filed with
11 the Franchise Tax Board.

12 (d) Every entity required to make a return under
13 subdivision (a) shall furnish to each person whose name
14 is required to be set forth in the return a written
15 statement showing both of the following:

16 (1) The name, address, and identification number of
17 the entity required to make the return.

18 (2) The aggregate amount of payments to the person
19 required to be shown on the return.

20 The written statement required under this subdivision
21 shall be furnished to the person on or before January 31
22 of the year following the calendar year for which the
23 return under subdivision (a) was required to be made.

24 (e) This section shall not apply to tips with respect to
25 which Section 13055 of the Unemployment Insurance
26 Code applies. The only records which an employer shall
27 be required to keep under this section in connection with
28 charged tips shall be charge receipts and copies of
29 statements furnished by employees under Section 13055
30 of the Unemployment Insurance Code.

31 SEC. 17. Section 18638 of the Revenue and Taxation
32 Code is amended to read:

33 18638. Every individual, partnership, limited liability
34 company, corporation, joint stock company or
35 association, insurance company, business trust, or
36 so-called Massachusetts trust, shall be required to file a
37 return for certain payments of remuneration for services
38 and furnish a written statement to the person whose
39 name is required to be set forth on the return in
40 accordance with the provisions of Section 6041A of the

1 Internal Revenue Code, except that no return or
2 statement shall be required if a statement with respect to
3 the services is required to be furnished under Division 6
4 (commencing with Section 13000) of the Unemployment
5 Insurance Code (relating to withholding tax on wages) or
6 Section 18647, and no return or statement shall be
7 required with respect to direct sales pursuant to Section
8 6041A(b) of the Internal Revenue Code.

9 SEC. 18. Section 18645 of the Revenue and Taxation
10 Code is amended to read:

11 18645. (a) The Franchise Tax Board may require a
12 copy of the federal information return to be filed with the
13 Franchise Tax Board if a federal information return was
14 required under any of the following:

15 (1) Section 6039C of the Internal Revenue Code,
16 relating to returns with respect to foreign persons holding
17 direct investments in United States real property
18 interests, if that person holds a direct investment in a
19 California real property interest as defined in Section
20 18662.

21 (2) Section 6050H of the Internal Revenue Code,
22 relating to mortgage interest received in trade or
23 business from individuals.

24 (3) Section 6050J of the Internal Revenue Code,
25 relating to foreclosures and abandonments of security.

26 (4) Section 6050K of the Internal Revenue Code,
27 relating to exchanges of certain partnership interests.

28 (5) Section 6050L of the Internal Revenue Code,
29 relating to certain dispositions of donated property.

30 (6) Section 6050N of the Internal Revenue Code,
31 relating to returns regarding payments of royalties.

32 (7) Section 6050P of the Internal Revenue Code,
33 relating to returns regarding the cancellation of
34 indebtedness by certain financial entities.

35 (b) Every person required to make a return under
36 subdivision (a) shall also furnish a statement to each
37 person whose name is required to be set forth in the
38 return, as required to do so by the Internal Revenue
39 Code.



1 (c) A transferor of a partnership interest shall be
2 required to notify the partnership of that exchange in
3 accordance with Section 6050K(c) of the Internal
4 Revenue Code.

5 (d) The Franchise Tax Board shall require a copy of
6 the federal information return to be filed with the
7 Franchise Tax Board if a federal information return was
8 required under Section 6050I of the Internal Revenue
9 Code, relating to cash received in trade or business.

10 (e) (1) The Attorney General shall, upon court order
11 following a showing ex parte to a magistrate of an
12 articulable suspicion that an individual or entity has
13 committed a felony offense to which a federal
14 information return is related, be provided a copy of a
15 federal information return filed with the Franchise Tax
16 Board under subdivision (d). The Attorney General may
17 make a return or information therefrom available to a
18 district attorney subject to regulations promulgated by
19 the Attorney General. The regulations shall require the
20 district attorney seeking the return or information to
21 specify in writing the specific reasons for believing that
22 a felony offense has been committed to which the return
23 or information is related.

24 (2) Any information or return obtained by the
25 Attorney General or a district attorney pursuant to this
26 section shall be confidential and used only for
27 investigative or prosecutorial purposes.

28 SEC. 19. Section 18662 of the Revenue and Taxation
29 Code is amended to read:

30 18662. (a) The Franchise Tax Board may, by
31 regulation, require any person, in whatever capacity
32 acting (including lessees or mortgagors of real or personal
33 property, fiduciaries, employers, and any officer or
34 department of the state or any political subdivision or
35 agency of the state, or any city organized under a
36 freeholder's charter, or any political body not a
37 subdivision or agency of the state), having the control,
38 receipt, custody, disposal, or payment of items of income
39 specified in subdivision (b), to withhold an amount,
40 determined by the Franchise Tax Board to reasonably

1 represent the amount of tax due when the items of
2 income are included with other income of the taxpayer,
3 and to transmit the amount withheld to the Franchise Tax
4 Board at the time as it may designate.

5 (b) The items of income referred to in subdivision (a)
6 are interest, dividends, rent, prizes and winnings,
7 premiums, annuities, emoluments, compensation for
8 services, including bonuses, partnership income or gains,
9 and other fixed or determinable annual or periodical
10 gains, profits, and income.

11 (c) The Franchise Tax Board may authorize the tax
12 under subdivision (a) to be deducted and withheld from
13 the interest upon any securities the owners of which are
14 not known to the withholding agent.

15 (d) Any person failing to withhold from any payments
16 any amounts required by subdivision (a) to be withheld
17 is liable for the amount withheld or the amount of taxes
18 due from the person to whom the payments are made to
19 an extent not in excess of the amounts required to be
20 withheld, whichever is greater, unless it is shown that the
21 failure to withhold is due to reasonable cause.

22 (e) (1) In the case of any disposition of a California
23 real property interest by a person (but not a partnership
24 as determined in accordance with Subchapter K of
25 Chapter 1 of Subtitle A of the Internal Revenue Code, or
26 a corporation), when the return required to be filed with
27 the Secretary of the Treasury under Section 6045(e) of
28 the Internal Revenue Code indicates, or the
29 authorization for the disbursement of the transaction's
30 funds instructs, that the funds be disbursed either to a
31 transferor with a last known street address outside the
32 boundaries of this state at the time of the transfer of the
33 title to the California real property or to the financial
34 intermediary of the transferor, the transferee shall be
35 required to withhold an amount equal to $3\frac{1}{3}$ percent of
36 the sales price of the California real property conveyed.

37 (2) In the case of any disposition of a California real
38 property interest by a corporation, the transferee shall be
39 required to withhold an amount equal to $3\frac{1}{3}$ percent of
40 the sales price of the California real property conveyed,

1 if the corporation immediately after the transfer of the
2 title to the California real property has no permanent
3 place of business in California. For purposes of this
4 subdivision, a corporation has no permanent place of
5 business in California if all of the following apply:

6 (A) It is not organized and existing under the laws of
7 California.

8 (B) It does not qualify with the office of the Secretary
9 of State to transact business in California.

10 (C) It does not maintain and staff a permanent office
11 in California.

12 (3) Notwithstanding any other provision of this
13 subdivision, all of the following shall apply:

14 (A) No transferee shall be required to withhold any
15 amount under this subdivision if the sales price of the
16 California real property conveyed does not exceed one
17 hundred thousand dollars (\$100,000).

18 (B) No transferee shall be required to withhold any
19 amount under this subdivision unless written notification
20 of the withholding requirements of this subdivision has
21 been provided by the real estate escrow person.

22 (C) No transferee shall be required to withhold under
23 this subdivision when the transferor is a bank acting as
24 trustee other than a trustee of a deed of trust.

25 (D) No transferee shall be required to withhold under
26 this subdivision when the transferee is a corporate
27 beneficiary under a mortgage or beneficiary under a
28 deed of trust and the California real property is acquired
29 in judicial or nonjudicial foreclosure or by a deed in lieu
30 of foreclosure.

31 (E) No transferee shall be required to withhold any
32 amount under this subdivision if the transferee, in good
33 faith and based on all the information of which he or she
34 has knowledge, relies on a written certificate executed by
35 the transferor, certifying under penalty of perjury, any of
36 the following:

37 (i) That the transferor is a resident of California.

38 (ii) That the California real property being conveyed
39 is the principal residence of the transferor, within the
40 meaning of Section 1034 of the Internal Revenue Code.

1 (iii) The transferor, if a corporation, has a permanent
2 place of business in California.

3 (4) (A) At the request of the transferor, the Franchise
4 Tax Board may authorize that a reduced amount or no
5 amount be withheld under this subdivision if the
6 Franchise Tax Board determines that to substitute a
7 reduced amount or no amount shall not jeopardize the
8 collection of tax imposed by Part 10 (commencing with
9 Section 17001) or Part 11 (commencing with Section
10 23001). If the transferor provides documentation
11 sufficient for the Franchise Tax Board to determine the
12 actual gain required to be recognized on the transaction,
13 the Franchise Tax Board may authorize a reduced
14 amount based on the amount of the gain, as determined,
15 which will result in a sum which is substantially
16 equivalent to the amount of tax reasonably estimated to
17 be due under Part 10 (commencing with Section 17001)
18 or Part 11 (commencing with Section 23001) from the
19 inclusion of the gain in the gross amount of the transferor.

20 (B) Within 45 days after receiving a request that a
21 reduced amount or no amount be withheld, the
22 Franchise Tax Board shall either authorize a reduced
23 amount or no amount, or deny the request.

24 (C) In the case where the parties to the transaction are
25 requesting that a reduced amount or no amount be
26 withheld and the response by the Franchise Tax Board to
27 the request has not been received at the time title to the
28 California real property is transferred, the parties may
29 direct the real estate escrow person to hold in trust for 45
30 days the amount required to be withheld under this
31 subdivision. The parties shall instruct the real estate
32 escrow person that at the end of 45 days the real estate
33 escrow person shall remit the amount withheld to the
34 Franchise Tax Board in accordance with this section,
35 unless the Franchise Tax Board has authorized that a
36 reduced amount or no amount be withheld.

37 (5) Amounts withheld and payments made in
38 accordance with this subdivision shall be reported and
39 remitted to the Franchise Tax Board in the form and at
40 the time as the Franchise Tax Board shall determine.

1 (6) “California real property interest” means an
2 interest in real property located in California and defined
3 in Section 897(c)(1)(A)(i) of the Internal Revenue
4 Code.

5 (7) For purposes of this subdivision, “financial
6 intermediary” means an agent for the purpose of
7 receiving and transferring funds to a principal.

8 (8) For purposes of this subdivision, “real estate
9 escrow person” means any of the following persons
10 involved in the real estate transaction:

11 (A) The person (including any attorney, escrow
12 company, or title company) responsible for closing the
13 transaction.

14 (B) If no other person described in subparagraph (A)
15 is responsible for closing the transaction, then any other
16 person who receives and disburses the consideration or
17 value for the interest or property conveyed.

18 (9) (A) Unless the real estate escrow person provides
19 “assistance,” it shall be unlawful for any real estate escrow
20 person to charge any customer for complying with the
21 requirements of this subdivision.

22 (B) For purposes of this paragraph, “assistance”
23 includes, but is not limited to, helping the parties clarify
24 with the Franchise Tax Board the issue of whether
25 withholding is required under this subdivision, helping
26 the parties request that the Franchise Tax Board
27 authorize a reduced amount or no amount be withheld
28 under this subdivision, or, upon request of the parties,
29 withholding an amount under this subdivision and
30 remitting the amount to the Franchise Tax Board.

31 (C) For purposes of this paragraph, “assistance” does
32 not include providing the written notification of the
33 withholding requirements of this subdivision, or
34 providing the certification that either:

35 (i) The transferor is a resident of California or that the
36 California real property being conveyed is the
37 transferor’s principal residence.

38 (ii) The transferor, if a corporation, has a permanent
39 place of business in California.

1 (D) In a case where the real estate escrow person
2 provides “assistance” in complying with the withholding
3 requirements of this subdivision, it shall be unlawful for
4 the real estate escrow person to charge any customer a
5 fee that exceeds forty-five dollars (\$45).

6 (10) For purposes of this subdivision, “sales price”
7 means the sum of all of the following:

8 (A) The cash paid, or to be paid. The term “cash paid,
9 or to be paid” does not include stated or unstated interest
10 or original issue discount (as determined by Sections 1271
11 to 1275, inclusive, of the Internal Revenue Code).

12 (B) The fair market value of other property
13 transferred, or to be transferred.

14 (C) The outstanding amount of any liability assumed
15 by the transferee or to which the California real property
16 interest is subject immediately before and after the
17 transfer.

18 (f) Whenever any person has withheld any amount
19 pursuant to this section, the amount so withheld shall be
20 held in trust for the State of California. The amount of the
21 fund shall be assessed, collected, and paid in the same
22 manner and subject to the same provisions and
23 limitations (including penalties) as are applicable with
24 respect to the taxes imposed by Part 10 (commencing
25 with Section 17001), Part 11 (commencing with Section
26 23001), or this part.

27 (g) Withholding shall not be required under this
28 section with respect to wages, salaries, fees, or other
29 compensation paid by a corporation for services
30 performed in California for that corporation to a
31 nonresident corporate director for director services,
32 including attendance at a board of directors’ meeting.

33 (h) In the case of any payment described in
34 subdivision (g), the person making the payment shall do
35 each of the following:

36 (1) File a return with the Franchise Tax Board at the
37 time and in the form and manner specified by the
38 Franchise Tax Board.

(2) Provide the payee with a statement at the time and in the form and manner specified by the Franchise Tax Board.

SEC. 20. Section 18670 of the Revenue and Taxation Code is amended to read:

18670. (a) The Franchise Tax Board may by notice, served personally or by first-class mail, require any employer, person, officer or department of the state, political subdivision or agency of the state, including the Regents of the University of California, a city organized under a freeholders' charter, or a political body not a subdivision or agency of the state, having in their possession, or under their control, any credits or other personal property or other things of value, belonging to a taxpayer or to an employer or person who has failed to withhold and transmit amounts due pursuant to this article, to withhold, from the credits or other personal property or other things of value, the amount of any tax, interest, or penalties due from the taxpayer or the amount of any liability incurred by that employer or person for failure to withhold and transmit amounts due from a taxpayer under this part and to transmit the amount withheld to the Franchise Tax Board at the times that it may designate. However, in the case of a depository institution, as defined in Section 19(b) of the Federal Reserve Act (12 U.S.C.A. Sec. 461(b)(1)(A)), amounts due from a taxpayer under this part shall be transmitted to the Franchise Tax Board not less than 10 business days from receipt of the notice. To be effective, the notice shall state the amount due from the taxpayer and shall be delivered or mailed to the branch or office reported in information returns filed with the Franchise Tax Board, or the branch or office where the credits or other property is held, unless another branch or office is designated by the employer, person, officer or department of the state, political subdivision or agency of the state, including the Regents of the University of California, a city organized under a freeholders' charter or a political body not a subdivision or agency of the state.

(b) (1) At least 45 days before sending a notice to withhold to the address indicated on the information return, the Franchise Tax Board shall request a depository institution to do either of the following:

(A) Verify that the address on its information return is its designated address for receiving notices to withhold.

(B) Provide the Franchise Tax Board with a designated address for receiving notices to withhold.

(2) Once the depository institution has specified a designated address pursuant to paragraph (1), the Franchise Tax Board shall send all notices to that address unless the depository institution provides notification of another address. The Franchise Tax Board shall send all notices to withhold to a new designated address 30 days after notification.

(3) Failure to verify or provide a designated address within 30 days of receiving the request shall be deemed verification of the address on the information return as the depository institution's designated address.

(c) Any corporation or person failing to withhold the amounts due from any taxpayer and transmit them to the Franchise Tax Board after service of the notice shall be liable for those amounts. However, in the case of a depository institution, if a notice to withhold is mailed to the branch where the account is located or principal banking office, the depository institution shall be liable for a failure to withhold only to the extent that the accounts can be identified in information normally maintained at that location in the ordinary course of business.

SEC. 21. Section 19009 of the Revenue and Taxation Code is amended to read:

19009. (a) Whenever any person or employer who is required to collect, account for, and pay over any tax—

(1) At the time and in the manner prescribed by law or regulations (A) fails to collect, truthfully account for, or pay over the tax, or (B) fails to make deposits, payments, or returns of the tax, and

(2) Is notified, by notice delivered in hand or by registered mail of any such failure, then all the

1 requirements of subdivision (b) shall be complied with.
 2 In the case of a corporation, partnership, limited liability
 3 company, or trust, notice to an officer, partner, manager,
 4 member, or trustee, shall, for purposes of this section, be
 5 deemed to be sufficient notice to the corporation,
 6 partnership, limited liability company, or trust and to all
 7 officers, partners, managers, members, trustees, and
 8 employees thereof.

9 (b) Any person or employer who is required to collect,
 10 account for, and pay over any tax imposed by Part 10
 11 (commencing with Section 17001) or Part 11
 12 (commencing with Section 23001), if notice has been
 13 delivered to that person or employer in accordance with
 14 subdivision (a), shall collect the taxes, which become
 15 collectible after delivery of the notice, shall (not later
 16 than the end of the second banking day after any amount
 17 of the taxes is collected) deposit that amount in a separate
 18 account in a bank located within the limits of this state,
 19 and shall keep the amount of those taxes in that account
 20 until payment over to the Franchise Tax Board. Any such
 21 account shall be designated as a special fund in trust for
 22 the Franchise Tax Board, payable to the Franchise Tax
 23 Board by that person or employer as trustee.

24 (c) Whenever the Franchise Tax Board is satisfied,
 25 with respect to any notification made under subdivision
 26 (a), that all requirements of law and regulations with
 27 respect to the taxes, will henceforth be complied with, it
 28 may cancel the notification. The cancellation shall take
 29 effect at the time as is specified in the notice of the
 30 cancellation.

31 SEC. 22. Section 19011 of the Revenue and Taxation
 32 Code is amended to read:

33 19011. (a) All payments required under this part,
 34 regardless of the income (or taxable) year to which the
 35 payments apply shall be remitted to the Franchise Tax
 36 Board by electronic funds transfer pursuant to Division 11
 37 (commencing with Section 11101) of the Commercial
 38 Code, once any of the following conditions are met:

39 (1) With respect to any corporation, any installment
 40 payment of estimated tax made pursuant to Section 19025

1 or the payment made pursuant to Section 18604 with
2 regard to an extension of time to file exceeds fifty
3 thousand dollars (\$50,000) in any income year beginning
4 on or after January 1, 1991, or exceeds twenty thousand
5 dollars (\$20,000) in any income year beginning on or after
6 January 1, 1995.

7 (2) With respect to any corporation, the total tax
8 liability exceeds two hundred thousand dollars (\$200,000)
9 in any income year beginning on or after January 1, 1991,
10 or exceeds eighty thousand dollars (\$80,000) in any
11 income year beginning on or after January 1, 1995. For
12 purposes of this section, total tax liability shall be the total
13 tax liability as shown on the original return, after any
14 adjustment made pursuant to Section 19051.

15 (3) A partnership or taxpayer (for purposes of this
16 section, "taxpayer") submits a request to the Franchise
17 Tax Board and is granted permission to make electronic
18 funds transfers.

19 (b) A taxpayer required to remit payments to the
20 Franchise Tax Board by electronic funds transfer may
21 elect to discontinue making payments where the
22 threshold requirements set forth in paragraphs (1) and
23 (2) of subdivision (a) were not met for the preceding
24 income (or taxable) year. The election shall be made in
25 a form and manner prescribed by the Franchise Tax
26 Board.

27 (c) Any taxpayer required to remit payment by
28 electronic funds transfer pursuant to this section who
29 makes payment by other means shall pay a penalty of 10
30 percent of the amount paid, unless it is shown that the
31 failure to make payment as required was for reasonable
32 cause and was not the result of willful neglect.

33 (d) Any taxpayer required to remit payments by
34 electronic funds transfer pursuant to this section may
35 request a waiver of those requirements from the
36 Franchise Tax Board. The Franchise Tax Board may grant
37 a waiver only if it determines that the particular amounts
38 paid in excess of the threshold amounts established in this
39 section were not representative of the taxpayer's tax
40 liability. If a taxpayer is granted a waiver, subsequent

1 remittances by electronic funds transfer shall be required
2 only on those terms set forth in the waiver.

3 (e) The Franchise Tax Board shall accept remittances
4 by electronic funds transfer pursuant to this section no
5 later than January 1, 1993. Electronic funds transfer
6 procedures, in addition to those described in subdivision
7 (f), shall be as prescribed by the Franchise Tax Board.
8 Payment is deemed complete on the date the electronic
9 funds transfer is initiated, if settlement to the state's
10 demand account occurs on or before the banking day
11 following the date the transfer is initiated. If settlement
12 to the state's demand account does not occur on or before
13 the banking day following the date the transfer is
14 initiated, payment is deemed to occur on the date
15 settlement occurs.

16 (f) For purposes of this section:

17 (1) "Electronic funds transfer" means any transfer of
18 funds, other than a transaction originated by check, draft,
19 or similar paper instrument, that is initiated through an
20 electronic terminal, telephonic instrument, or computer
21 or magnetic tape, so as to order, instruct, or authorize a
22 financial institution to debit or credit an account.
23 Electronic funds transfer shall be accomplished by an
24 automated clearinghouse debit, automated
25 clearinghouse credit, a Federal Reserve Wire Transfer
26 (Fedwire), or by an international funds transfer.

27 (2) "Automated clearinghouse" means any federal
28 reserve bank, or an organization established by
29 agreement with the National Automated Clearing House
30 Association, that operates as a clearinghouse for
31 transmitting or receiving entries between banks or bank
32 accounts and that authorizes an electronic transfer of
33 funds between those banks or bank accounts.

34 (3) "Automated clearinghouse debit" means a
35 transaction in which any department of the state, through
36 its designated depository bank, originates an automated
37 clearinghouse transaction debiting the taxpayer's bank
38 account and crediting the state's bank account for the
39 amount of tax. Banking costs incurred for the automated

1 clearinghouse debit transaction by the taxpayer shall be
2 paid by the state.

3 (4) “Automated clearinghouse credit” means an
4 automated clearinghouse transaction in which the
5 taxpayer, through its own bank, originates an entry
6 crediting the state’s bank account and debiting its own
7 bank account. Banking costs incurred by the state for the
8 automated clearinghouse credit transaction may be
9 charged to the taxpayer.

10 (5) “Fedwire” means any transaction originated by
11 the taxpayer and utilizing the national electronic
12 payment system to transfer funds through federal reserve
13 banks, pursuant to which the taxpayer debits its own bank
14 account and credits the state’s bank account. Electronic
15 funds transfers may be made by Fedwire only if prior
16 approval is obtained from the Franchise Tax Board and
17 the taxpayer is unable, for reasonable cause, to make
18 payments pursuant to paragraph (3) or (4). Banking costs
19 charged to the taxpayer and to the state may be charged
20 to the taxpayer.

21 (6) “International funds transfer” means any
22 transaction originated by the taxpayer and utilizing the
23 international electronic payment system to transfer
24 funds, pursuant to which the taxpayer debits its own bank
25 account and credits the state’s bank account.

26 (7) In determining whether a payment or total tax
27 liability exceeds the amounts established in subdivision
28 (a), the income of all taxpayers whose income derived
29 from, or attributable to, sources within this state is
30 required to be determined by a combined report shall be
31 aggregated and the total aggregate amount shall be
32 considered to be the income of a single taxpayer for
33 purposes of determining the payment or total tax liability
34 of a single taxpayer.

35 SEC. 23. Section 19021 of the Revenue and Taxation
36 Code is amended to read:

37 19021. In the case of taxpayers subject to the tax
38 imposed by Article 3 (commencing with Section 23181)
39 of Chapter 2 of Part 11, there shall be due and payable on
40 or before the 15th day of the third month following the

1 close of the preceding year from each taxpayer a
2 percentage of its net income as disclosed by its return
3 which is equal to the rate applicable to corporations
4 subject to the tax imposed by Article 2 (commencing with
5 Section 23151) of Chapter 2 of Part 11 plus the personal
6 property tax rate equivalent included in the bank and
7 financial corporation tax rate determination by the
8 Franchise Tax Board pursuant to Sections 23186 and
9 23186.1. The payment required by this section shall not be
10 less than the minimum tax specified in Section 23153.

11 SEC. 24. Section 19023 of the Revenue and Taxation
12 Code is amended to read:

13 19023. For purposes of this article, in the case of a
14 corporation, other than a bank or financial corporation,
15 the term “estimated tax” means the amount which the
16 corporation estimates as the amount of the tax imposed
17 by Part 11 (commencing with Section 23001); but in no
18 event shall the estimated tax of a corporation subject to
19 the tax imposed by Article 2 (commencing with Section
20 23151) of Chapter 2 of Part 11 be less than the minimum
21 tax prescribed in Section 23153.

22 SEC. 25. Section 19024 of the Revenue and Taxation
23 Code is amended to read:

24 19024. (a) In the case of banks and financial
25 corporations, “estimated tax” means the amount which
26 the bank or financial corporation estimates as the amount
27 of the tax imposed by Part 11 (commencing with Section
28 23001) at the rate determined by the Franchise Tax Board
29 for the preceding year pursuant to Section 23186.1, but in
30 no event shall the estimated tax of a bank or financial
31 corporation be less than the minimum tax prescribed in
32 Section 23153.

33 (b) In case of an increase or decrease in the rate of tax
34 imposed under Section 23151 (tax on general
35 corporations), a bank or financial corporation shall be
36 required to increase or decrease the rate determined by
37 the Franchise Tax Board for the preceding year by the
38 same amount as the change in the rate imposed under
39 Section 23151 determined in accordance with Section
40 24251 (relating to computation of tax when law changed).

1 SEC. 26. Section 19058 of the Revenue and Taxation
2 Code is amended to read:

3 19058. (a) If the taxpayer omits from gross income an
4 amount properly includable therein which is in excess of
5 25 percent of the amount of gross income stated in the
6 return, a notice of a proposed deficiency assessment may
7 be mailed to the taxpayer within six years after the return
8 was filed. Additionally, in the case of a corporation, a
9 proceeding in court for the collection of the tax may be
10 commenced without assessment at any time within six
11 years after the return was filed.

12 (b) For purposes of this section both of the following
13 shall apply:

14 (1) In the case of a trade or business, the term “gross
15 income” means the total of the amounts received or
16 accrued from the sale of goods or services (if the amounts
17 are required to be shown on the return) prior to
18 diminution by the cost of the sales or service.

19 (2) In determining the amount omitted from gross
20 income, there shall not be taken into account any amount
21 which is omitted from gross income stated in the return
22 if the amount is disclosed in the return, or in a statement
23 attached to the return, in a manner adequate to apprise
24 the Franchise Tax Board of the nature and amount of the
25 item.

26 SEC. 27. Section 19132.5 of the Revenue and Taxation
27 Code is amended to read:

28 19132.5. (a) In the case of a qualified taxpayer, no
29 penalty shall be assessed under Section 19132 if the return
30 is filed timely (not later than the extended due date
31 granted under Section 18567 or 18604) and the tax
32 required to be paid on or before the due date of the
33 return, without regard to extension, is paid within the
34 following time:

35 (1) In the case of an individual, partnership, or
36 fiduciary, within six months of the original due date of the
37 return.

38 (2) In the case of a corporation, within seven months
39 of the original due date of the return.

(b) Any penalty imposed under Section 19132 shall be assessed from the original due date of the return if the taxpayer fails to pay the tax within the time specified in this section.

(c) This section shall apply to payment of the amount shown as tax on the original returns required to be filed during calendar year 1994.

(d) For purposes of this section, “qualified taxpayer” means any corporation, fiduciary, partnership, or individual taxpayer to whom one of the following applies as a result of the Northridge earthquake of January 1994, any related aftershock, or any related casualty:

(1) The qualified taxpayer sustained any significant property loss.

(2) The qualified taxpayer suffered a loss of employment due to property damage suffered by his or her employer.

(3) The qualified taxpayer realized significant loss of business income from a business located within the Northridge earthquake area.

SEC. 28. Section 19141.5 of the Revenue and Taxation Code is amended to read:

19141.5. (a) (1) Section 6038A of the Internal Revenue Code, relating to information with respect to certain foreign-owned corporations, shall apply.

(2) A penalty shall be imposed under this part for failure to furnish information or maintain records and that penalty shall be determined in accordance with Section 6038A of the Internal Revenue Code.

(3) Section 11314 of Public Law 101-508, relating to application of amendments made by Section 7403 of the Revenue Reconciliation Act of 1989 to taxable years beginning on or before July 10, 1989, shall apply.

(4) Section 6038A(e) of the Internal Revenue Code, relating to enforcement of requests for certain records, is modified as follows:

(A) Each reference to Section 7602, 7603, or 7604 of the Internal Revenue Code shall instead refer to Section 19504.

1 (B) Each reference to “summons” shall instead refer
2 to “subpoena duces tecum.”

3 (C) Section 6038A(e)(4)(C) of the Internal Revenue
4 Code shall refer to “superior courts of the State of
5 California for the Counties of Los Angeles, Sacramento,
6 and San Diego, and for the City and County of San
7 Francisco,” instead of “United States district court for the
8 district in which the person (to whom the summons is
9 issued) resides or is found.”

10 (b) In the case of a corporation, each of the following
11 shall apply:

12 (1) Section 6038B of the Internal Revenue Code,
13 relating to notice of certain transfers to foreign persons,
14 shall apply.

15 (2) A penalty shall be imposed under this part for
16 failure to furnish information or maintain records and
17 that penalty shall be determined in accordance with
18 Section 6038B of the Internal Revenue Code.

19 (c) (1) Section 6038C of the Internal Revenue Code,
20 relating to information with respect to foreign
21 corporations engaged in United States business, shall
22 apply.

23 (2) A penalty shall be imposed under this part for
24 failure to furnish information or maintain records and
25 that penalty shall be determined in accordance with
26 Section 6038C of the Internal Revenue Code.

27 (3) Section 6038C(d) of the Internal Revenue Code,
28 relating to enforcement of requests for certain records, is
29 modified as follows:

30 (A) Each reference to Section 7602, 7603, or 7604 of the
31 Internal Revenue Code shall instead refer to Section
32 19504.

33 (B) Each reference to “summons” shall instead refer
34 to “subpoena duces tecum.”

35 (d) For purposes of this part, the information required
36 to be filed with the Franchise Tax Board pursuant to this
37 section shall be a copy of the information filed with the
38 Internal Revenue Service.

39 (e) For purposes of this section, each of the following
40 shall apply:

1 (1) Section 7701(a)(4) of the Internal Revenue Code,
2 relating to the term “domestic,” shall apply.

3 (2) Section 7701(a)(5) of the Internal Revenue Code,
4 relating to the term “foreign,” shall apply.

5 (3) Section 7701(a)(30) of the Internal Revenue Code,
6 relating to the term “United States person,” shall apply.
7 However, the term “United States person” shall not
8 include any corporation that is not subject to the tax
9 imposed under Chapter 2 (commencing with Section
10 23101), Chapter 2.5 (commencing with Section 23400), or
11 Chapter 3 (commencing with Section 23501), of Part 11.

12 SEC. 29. Section 19141.6 of the Revenue and Taxation
13 Code is amended to read:

14 19141.6. (a) Each taxpayer determining its income
15 subject to tax pursuant to Section 25101 or electing to file
16 pursuant to Section 25110 shall, for income years
17 beginning on or after January 1, 1994, maintain (in the
18 location, in the manner, and to the extent prescribed in
19 regulations which shall be promulgated by the Franchise
20 Tax Board on or before December 31, 1995) and make
21 available upon request all of the following:

22 (1) Any records as may be appropriate to determine
23 the correct treatment of the components that are a part
24 of one or more unitary businesses for purposes of
25 determining the income derived from or attributable to
26 this state pursuant to Section 25101 or 25110.

27 (2) Any records as may be appropriate to determine
28 the correct treatment of amounts that are attributable to
29 the classification of an item as business or nonbusiness
30 income for purposes of Article 2 (commencing with
31 Section 25120) of Chapter 17 of Part 11.

32 (3) Any records as may be appropriate to determine
33 the correct treatment of the apportionment factors for
34 purposes of Article 2 (commencing with Section 25120)
35 of Chapter 17 of Part 11.

36 (4) Documents and information, including any
37 questionnaires completed and submitted to the Internal
38 Revenue Service that are necessary to audit issues
39 involving attribution of income to the United States or
40 foreign jurisdictions under Section 882 or Subpart F of

1 Part III of Subchapter N, or similar sections, of the
2 Internal Revenue Code.

3 (b) For purposes of this section:

4 (1) Information for any year shall be retained for that
5 period of time in which the taxpayers' income or
6 franchise tax liability to this state may be subject to
7 adjustment, including all periods in which additional
8 income or franchise taxes may be assessed, not to exceed
9 eight years from the due date or extended due date of the
10 return, or during which a protest is pending before the
11 Franchise Tax Board, or an appeal is pending before the
12 State Board of Equalization or a lawsuit is pending in the
13 courts of this state or the United States with respect to
14 California franchise or income tax.

15 (2) "Related party" means corporations that are
16 related because one owns or controls directly or
17 indirectly more than 50 percent of the stock of the other
18 or because more than 50 percent of the voting stock of
19 each is owned or controlled, directly or indirectly, by the
20 same interests.

21 (3) "Records" includes any books, papers, or other
22 data.

23 (c) (1) If a corporation subject to this section fails to
24 maintain or fails to cause another to maintain records as
25 required by subdivision (a), that corporation shall pay a
26 penalty of ten thousand dollars (\$10,000) for each income
27 year with respect to which the failure occurs.

28 (2) If any failure described in paragraph (1) continues
29 for more than 90 days after the day on which the
30 Franchise Tax Board mails notice of the failure to the
31 corporation, that corporation shall pay a penalty (in
32 addition to the amount required under paragraph (1)) of
33 ten thousand dollars (\$10,000) for each 30-day period (or
34 fraction thereof) during which the failure continues after
35 the expiration of the 90-day period. The additional
36 penalty imposed by this subdivision shall not exceed a
37 maximum of fifty thousand dollars (\$50,000) if the failure
38 to maintain or the failure to cause another to maintain is
39 not willful. This maximum shall apply with respect to
40 income years beginning on or after January 1, 1994, and

1 before the earlier of the first day of the month following
2 the month in which regulations are adopted pursuant to
3 this section or December 31, 1995.

4 (3) For purposes of this section, the time prescribed by
5 regulations to maintain records (and the beginning of the
6 90-day period after notice by the Franchise Tax Board)
7 shall be treated as not earlier than the last day on which
8 (as shown to the satisfaction of the Franchise Tax Board)
9 reasonable cause existed for failure to maintain the
10 records.

11 (d) (1) The Franchise Tax Board may apply the rules
12 of paragraph (2) whether or not the board begins a
13 proceeding to enforce a subpoena, or subpoena duces
14 tecum, if subparagraphs (A), (B), and (C) apply:

15 (A) For purposes of determining the correct
16 treatment under Part 11 (commencing with Section
17 23001) of the items described in subdivision (a), the
18 Franchise Tax Board issues a subpoena or subpoena duces
19 tecum to a corporation to produce (either directly or as
20 agent for the related party) any records or testimony.

21 (B) The subpoena or subpoena duces tecum is not
22 quashed in a proceeding begun under paragraph (3) and
23 is not determined to be invalid in a proceeding begun
24 under Section 19504 to enforce the subpoena or subpoena
25 duces tecum.

26 (C) The corporation does not substantially comply in
27 a timely manner with the subpoena or subpoena duces
28 tecum and the Franchise Tax Board has sent by certified
29 or registered mail a notice to that corporation that it has
30 not substantially complied.

31 (D) If the corporation fails to maintain or fails to cause
32 another to maintain records as required by subdivision
33 (a), and by reason of that failure, the subpoena, or
34 subpoena duces tecum, is quashed in a proceeding
35 described in subparagraph (B) or the corporation is not
36 able to provide the records requested in the subpoena or
37 subpoena duces tecum, the Franchise Tax Board may
38 apply the rules of paragraph (2) to any of the items
39 described in subdivision (a) to which the records relate.

1 (2) (A) All of the following shall be determined by the
2 Franchise Tax Board in the Franchise Tax Board's sole
3 discretion from the Franchise Tax Board's own
4 knowledge or from information the Franchise Tax Board
5 may obtain through testimony or otherwise:

6 (i) The components that are a part of one or more
7 unitary businesses for purposes of determining the
8 income derived from or attributable to this state pursuant
9 to Section 25101 or 25110.

10 (ii) Amounts that are attributable to the classification
11 of an item as business or nonbusiness income for purposes
12 of Article 2 (commencing with Section 25120) of Chapter
13 17 of Part 11.

14 (iii) The apportionment factors for purposes of Article
15 2 (commencing with Section 25120) of Chapter 17 of Part
16 11.

17 (iv) The correct amount of income under Section 882
18 of, or Subpart F of Part III of, Subchapter N of, or similar
19 sections of, the Internal Revenue Code.

20 (B) This paragraph shall apply to determine the
21 correct treatment of the items described in subdivision
22 (a) unless the corporation is authorized by its related
23 parties (in the manner and at the time as the Franchise
24 Tax Board shall prescribe) to act as the related parties'
25 limited agent solely for purposes of applying Section
26 19504 with respect to any request by the Franchise Tax
27 Board to examine records or produce testimony related
28 to any item described in subdivision (a) or with respect
29 to any subpoena or subpoena duces tecum for the records
30 or testimony. The appearance of persons or the
31 production of records by reason of the corporation being
32 an agent shall not subject those persons or records to legal
33 process for any purpose other than determining the
34 correct treatment under Part 11 of the items described in
35 subdivision (a).

36 (C) Determinations made in the sole discretion of the
37 Franchise Tax Board pursuant to this paragraph may be
38 appealed to the State Board of Equalization, in the
39 manner and at a time, as provided by Section 19045 or
40 19324, or may be the subject of an action to recover tax,

1 in the manner and at a time, as provided by Section 19382.
2 The review of determinations by the board or the court
3 shall be limited to whether the determinations were
4 arbitrary or capricious, or are not supported by
5 substantial evidence.

6 (3) (A) Notwithstanding any other law or rule of law,
7 any reporting corporation to which the Franchise Tax
8 Board issues a subpoena or subpoena duces tecum
9 referred to in subparagraph (A) of paragraph (1) shall
10 have the right to begin a proceeding to quash the
11 subpoena or subpoena duces tecum not later than the
12 90th day after the subpoena or subpoena duces tecum was
13 issued. In that proceeding, the Franchise Tax Board may
14 seek to compel compliance with the subpoena or
15 subpoena duces tecum.

16 (B) Notwithstanding any other law or rule of law, any
17 reporting corporation that has been notified by the
18 Franchise Tax Board that it has determined that the
19 corporation has not substantially complied with a
20 subpoena or subpoena duces tecum referred to in
21 paragraph (1) shall have the right to begin a proceeding
22 to review the determination not later than the 90th day
23 after the day on which the notice referred to in
24 subparagraph (C) of paragraph (1) was mailed. If the
25 proceeding is not begun on or before the 90th day, the
26 determination by the Franchise Tax Board shall be
27 binding and shall not be reviewed by any court.

28 (C) The superior courts of the State of California for
29 the Counties of Los Angeles, Sacramento, and San Diego,
30 and for the City and County of San Francisco shall have
31 jurisdiction to hear any proceeding brought under
32 subparagraphs (A) and (B). Any order or other
33 determination in the proceeding shall be treated as a final
34 order that may be appealed.

35 (D) If any corporation takes any action as provided in
36 subparagraphs (A) and (B), the running of any period of
37 limitations under Sections 19057 to 19064, inclusive
38 (relating to the assessment and collection of tax), or
39 under Section 19704 (relating to criminal prosecutions)
40 with respect to that corporation shall be suspended for

1 the period during which the proceedings, and appeals
2 therein, are pending. In no event shall any period expire
3 before the 90th day after the day on which there is a final
4 determination in the proceeding.

5 SEC. 30. Section 19147 of the Revenue and Taxation
6 Code is amended to read:

7 19147. (a) Notwithstanding Sections 19142 to 19145,
8 inclusive, the addition to the tax with respect to any
9 underpayment of any installment shall not be imposed if
10 the total amount of all payments of estimated tax paid on
11 or before the last date prescribed for the payment of the
12 installment equals or exceeds the amount which would
13 have been required to be paid on or before that date if the
14 estimated tax were whichever of the following is the
15 lesser:

16 (1) (A) The tax shown on the return of the taxpayer
17 for the preceding income year if a return showing a
18 liability for tax was filed by the taxpayer for the preceding
19 year and that preceding year was a year of 12 months. The
20 tax shown on the return, in the case of the tax imposed by
21 Article 3 (commencing with Section 23181) of Chapter 2
22 of Part 11, means the amount of tax shown on the return
23 for the income year as prescribed in Section 19021.

24 (B) In the case of a large corporation, subparagraph
25 (A) shall not apply, except as provided in clauses (i) and
26 (ii).

27 (i) Subparagraph (A) shall apply for purposes of
28 determining the amount of the first required installment
29 for any income year.

30 (ii) Any reduction in the first required installment by
31 reason of clause (i) shall be recaptured by increasing the
32 amount of the next required installment by the amount
33 of that reduction.

34 (2) (A) An amount equal to the applicable
35 percentage specified in Section 19144 of the tax for the
36 income year computed by placing on an annualized basis
37 the taxable income:

38 (i) For the first three months of the income year, in the
39 case of the installment required to be paid in the fourth
40 month.

(ii) For the first three months of the income year, in the case of the installment required to be paid in the sixth month.

(iii) For the first six months of the income year in the case of the installment required to be paid in the ninth month.

(iv) For the first nine months of the income year, in the case of the installment required to be paid in the 12th month of the taxable year.

(B) (i) If the taxpayer makes an election under this clause, each of the following shall apply:

(I) Clause (i) of subparagraph (A) shall be applied by substituting “two months” for “three months.”

(II) Clause (ii) of subparagraph (A) shall be applied by substituting “four months” for “three months.”

(III) Clause (iii) of subparagraph (A) shall be applied by substituting “seven months” for “six months.”

(IV) Clause (iv) of subparagraph (A) shall be applied by substituting “ten months” for “nine months.”

(ii) If the taxpayer makes an election under this clause, each of the following shall apply:

(I) Clause (ii) of subparagraph (A) shall be applied by substituting “five months” for “three months.”

(II) Clause (iii) of subparagraph (A) shall be applied by substituting “eight months” for “six months.”

(III) Clause (iv) of subparagraph (A) shall be applied by substituting “eleven months” for the “nine months.”

(iii) An election under clause (i) or (ii) shall apply to the income year for which the election is made and shall be effective only if the election is made on or before the date required for the payment of the first required installment for that income year.

(iv) This subparagraph shall apply to income years beginning on or after January 1, 1997.

(C) For purposes of this paragraph, the taxable income shall be placed on an annualized basis in the following manner:

(i) Multiply by 12 the taxable income referred to in subparagraph (A).

(ii) Divide the resulting amount by the number of months in the income year referred to in subparagraph (A).

“Taxable income” as used in this paragraph means “net income” includable in the measure of tax or “alternative minimum taxable income” (as defined by Section 23455).

(D) In the case of any corporation which is subject to the tax imposed under Section 23731, any reference to taxable income shall be treated as including a reference to unrelated business taxable income and, except in the case of an election under subparagraph (B), each of the following shall apply:

(i) Clause (i) of subparagraph (A) shall be applied by substituting “two months” for “three months.”

(ii) Clause (ii) of subparagraph (A) shall be applied by substituting “four months” for “three months.”

(iii) Clause (iii) of subparagraph (A) shall be applied by substituting “seven months” for “six months.”

(iv) Clause (iv) of subparagraph (A) shall be applied by substituting “ten months” for “nine months.”

(3) The applicable percentage specified in Section 19144 or more of the tax for the income year was paid by withholding of tax pursuant to Section 18662.

(4) The applicable percentage specified in Section 19144 or more of the net income for the income year consists of items from which an amount was withheld pursuant to Section 18662 and the amount of the first installment, including payments applied pursuant to subdivision (c) of Section 19025, equals at least the minimum franchise tax specified in Section 23153.

(b) (1) For purposes of this section, “large corporation” means any corporation if that corporation (or any predecessor corporation) had taxable income (computed without regard to net operating loss deductions) of one million dollars (\$1,000,000) or more for any income year during the testing period.

(2) For purposes of this subdivision, “testing period” means the three income years immediately preceding the income year involved.

1 SEC. 31. Section 19164 of the Revenue and Taxation
2 Code is amended to read:

3 19164. (a) (1) An accuracy-related penalty shall be
4 imposed under this part and shall be determined in
5 accordance with the provisions of Section 6662 of the
6 Internal Revenue Code, relating to imposition of
7 accuracy-related penalty.

8 (2) With respect to corporations, this subdivision shall
9 apply to all of the following:

10 (A) All income years beginning on or after January 1,
11 1990.

12 (B) Any other income year for which an assessment is
13 made after July 16, 1991.

14 (b) A fraud penalty shall be imposed under this part
15 and shall be determined in accordance with the
16 provisions of Section 6663 of the Internal Revenue Code,
17 relating to imposition of fraud penalty.

18 (c) The provisions of Section 6664 of the Internal
19 Revenue Code, relating to definitions and special rules,
20 shall apply.

21 (d) The provisions of Section 6665 of the Internal
22 Revenue Code, relating to applicable rules, shall apply.

23 SEC. 32. Section 19192 of the Revenue and Taxation
24 Code is amended to read:

25 19192. For purposes of this article:

26 (a) (1) “Qualified business entity” means an entity
27 that is all of the following:

28 (A) An entity that is a corporation, as defined in
29 Section 23038.

30 (B) A business entity, including any predecessors to
31 the business entity, that previously has never filed a
32 return with the Franchise Tax Board pursuant to this
33 part, Part 10 (commencing with Section 17001), or Part
34 11 (commencing with Section 23011).

35 (C) A business entity, including any predecessors to
36 the business entity, that previously has not been the
37 subject of an inquiry by the Franchise Tax Board with
38 respect to liability for any of the taxes imposed under Part
39 10 (commencing with Section 17001) or Part 11
40 (commencing with Section 23001).

(D) A business entity that voluntarily comes forward prior to any unilateral contact from the Franchise Tax Board, makes application for a voluntary disclosure agreement in a form and manner prescribed by the Franchise Tax Board, and makes a full and accurate statement of its activities in this state for the six immediately preceding taxable or income years.

(2) (A) Notwithstanding paragraph (1), a qualified business entity does not include any of the following:

(i) A business entity that is organized and existing under the laws of this state.

(ii) A business entity that is qualified or registered with the office of the Secretary of State.

(iii) A business entity that maintains and staffs a permanent facility in this state.

(B) For purposes of this paragraph, the storing of materials, goods, or products in a public warehouse pursuant to a public warehouse contract does not constitute maintaining a permanent facility in this state.

(3) “Qualified shareholder” means an individual that is all of the following:

(A) A nonresident on the signing date of the voluntary disclosure agreement.

(B) A shareholder of an S corporation (defined in Section 23800) that has applied for a voluntary disclosure agreement under this article under which all material facts pertinent to the shareholder’s liability would be disclosed on that S corporation’s voluntary disclosure agreement as required under clause (i) of subparagraph (A) of paragraph (2) of subdivision (d) of Section 19191.

(4) Notwithstanding paragraph (3), subparagraph (B) of paragraph (1) of subdivision (d) of Section 19191 shall not apply to any of the six taxable years immediately preceding the signing date that the qualified shareholder was a California resident required to file a California tax return, nor to any penalties or additions to tax attributable to income other than the California source income from the S corporation that filed an application under this article.

(b) “Signing date” of the voluntary disclosure agreement means the date on which a person duly authorized by the Franchise Tax Board signs the agreement.

(c) The amendments to this section made by the act adding this subdivision shall apply to taxable or income years beginning on or after January 1, 1997.

SEC. 33. Section 19254 of the Revenue and Taxation Code is amended to read:

19254. (a) (1) If any person, other than an organization exempt from taxation under Section 23701, fails to pay any amount of tax, penalty, addition to tax, interest, or other liability imposed and delinquent under Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or this part, a collection cost recovery fee shall be imposed if the Franchise Tax Board has mailed notice to that person for payment that advises that continued failure to pay the amount due may result in collection action, including the imposition of a collection cost recovery fee. The collection cost recovery fee shall be in the amount of:

(A) In the case of an individual, partnership, limited liability company classified as a partnership for California income tax purposes, or fiduciary, eighty-eight dollars (\$88) or an amount as adjusted under subdivision (b).

(B) In the case of a corporation or limited liability company classified as a corporation for California income tax purposes, one hundred sixty-six dollars (\$166) or an amount as adjusted under subdivision (b).

(2) If any person, other than an organization exempt from taxation under Section 23701, fails or refuses to make and file a tax return required by Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or this part, within 25 days after formal legal demand to file the tax return is mailed to that person by the Franchise Tax Board, the Franchise Tax Board shall impose a filing enforcement cost recovery fee in the amount of:

(A) In the case of an individual, partnership, limited liability company classified as a partnership for California

1 income tax purposes, or fiduciary, fifty-one dollars (\$51)
2 or an amount as adjusted under subdivision (b).

3 (B) In the case of a corporation or limited liability
4 company classified as a corporation for California income
5 tax purposes, one hundred nineteen dollars (\$119) or an
6 amount as adjusted under subdivision (b).

7 (b) For fees imposed under this section during the
8 fiscal year 1993–94 and fiscal years thereafter, the amount
9 of those fees shall be set to reflect actual costs and shall be
10 specified in the annual Budget Act.

11 (c) Interest shall not accrue with respect to the cost
12 recovery fees provided by this section.

13 (d) The amounts provided by this section are
14 obligations imposed by this part and may be collected in
15 any manner provided under this part for the collection of
16 a tax.

17 (e) Subdivision (a) is operative with respect to the
18 notices for payment or formal legal demands to file,
19 either of which is mailed on or after September 15, 1992.

20 (f) The Franchise Tax Board shall determine the total
21 amount of the cost recovery fees collected or accrued
22 through June 30, 1993, and shall notify the Controller of
23 that amount. The Controller shall transfer that amount to
24 the Franchise Tax Board, and that amount is hereby
25 appropriated to the board for the 1992–93 fiscal year for
26 reimbursement of its collection and filing enforcement
27 efforts.

28 SEC. 34. Section 19263 of the Revenue and Taxation
29 Code is amended to read:

30 19263. At any sale authorized by Section 19262, the
31 property shall be sold by the Franchise Tax Board or its
32 duly authorized agent in accordance with law and the
33 notice of sale, and the Franchise Tax Board shall deliver
34 to the purchaser a bill of sale for the property so sold and
35 the bill of sale shall vest title in the purchaser. The unsold
36 portion of any property so seized may be left at the place
37 of sale at the risk of the taxpayer. If, upon any sale, the
38 moneys so received exceed the amount of all taxes,
39 interest, penalties and costs due the state from the
40 taxpayer, any excess shall be returned to the taxpayer and

1 a receipt therefor obtained. However, if any person
2 having an interest in or lien upon the property has filed
3 with the Franchise Tax Board prior to any sale notice of
4 the interest or lien, the Franchise Tax Board shall
5 withhold any excess pending a determination of the
6 rights of the respective parties thereto by a court of
7 competent jurisdiction.

8 If, for any reason, the receipt of the taxpayer is not
9 available, the Franchise Tax Board shall deposit the
10 excess moneys with the Treasurer, as trustee for the
11 owner, subject to the order of the taxpayer or his or her
12 trust or estate, or in the case of a corporation, its successor
13 through reorganization, merger, or consolidation, or its
14 stockholders upon dissolution.

15 SEC. 35. The heading of Article 6 (commencing with
16 Section 19280) of Chapter 5 of Part 10.2 of Division 2 of
17 the Revenue and Taxation Code is amended and
18 renumbered to read:

19
20 Article 5.5. Collection of Amounts Imposed by a Court
21

22 SEC. 36. Section 19280 of the Revenue and Taxation
23 Code is amended to read:

24 19280. (a) (1) Fines, state or local penalties,
25 forfeitures, restitution fines, restitution orders, or any
26 other amounts imposed by a superior, municipal, or
27 justice court of the State of California upon a person or
28 any other entity that is due and payable in an amount
29 totaling no less than two hundred fifty dollars (\$250), in
30 the aggregate, for criminal offenses, including all offenses
31 involving a violation of the Vehicle Code except offenses
32 relating to parking or registration or offenses by
33 pedestrians or bicyclists, may, no sooner than 90 days after
34 payment of that amount becomes delinquent, be referred
35 by the county or the state to the Franchise Tax Board for
36 collection under guidelines prescribed by the Franchise
37 Tax Board.

38 (2) For purposes of this subdivision:

39 (A) The amounts referred by the county or state
40 under this section may include any amounts that

1 government may add to the court imposed obligation as
2 a result of the underlying offense, trial, or conviction. For
3 purposes of this article, those amounts shall be deemed to
4 be imposed by the court.

5 (B) Restitution orders may be referred to the
6 Franchise Tax Board only by a government entity, as
7 agreed upon by the Franchise Tax Board, provided that
8 all of the following apply:

9 (i) The government entity has the authority to collect
10 on behalf of the state or the victim.

11 (ii) The government entity shall be responsible for
12 distributing the restitution order collections, as
13 appropriate.

14 (iii) The government entity shall ensure, in making
15 the referrals and distributions, that it coordinates with
16 any other related collection activities that may occur by
17 counties or other state agencies.

18 (iv) The government entity shall ensure compliance
19 with laws relating to the reimbursement of the State
20 Restitution Fund.

21 (C) The Franchise Tax Board shall establish criteria
22 for referral, which shall include setting forth a minimum
23 dollar amount subject to referral and collection.

24 (b) For the period January 1, 1995, to December 31,
25 1997, inclusive, for purposes of a manageable
26 implementation and evaluation of the program
27 authorized by this article, the Franchise Tax Board may
28 limit referrals to nine counties.

29 (c) Upon written notice to the obligor from the
30 Franchise Tax Board, any amount referred to the
31 Franchise Tax Board under subdivision (a) and any
32 interest thereon, including any interest on the amount
33 referred under subdivision (a) that accrued prior to the
34 date of referral, shall be treated as final and due and
35 payable to the State of California, and shall be collected
36 from the obligor by the Franchise Tax Board in any
37 manner authorized under the law for collection of a
38 delinquent personal income tax liability, including, but
39 not limited to, issuance of an order and levy under Article
40 4 (commencing with Section 706.070) of Chapter 5 of

1 Division 2 of Title 9 of Part 2 of the Code of Civil
2 Procedure in the manner provided for earnings
3 withholding orders for taxes.

4 (d) (1) Part 10 (commencing with Section 18401),
5 this part, Part 10.7 (commencing with Section 21001), and
6 Part 11 (commencing with Section 23001) shall apply to
7 amounts referred under this article in the same manner
8 and with the same force and effect and to the full extent
9 as if the language of those laws had been incorporated in
10 full into this article, except to the extent that any
11 provision is either inconsistent with this article or is not
12 relevant to this article.

13 (2) Any information, information sources, or
14 enforcement remedies and capabilities available to the
15 court or the state referring the amount due described in
16 subdivision (a), shall be available to the Franchise Tax
17 Board to be used in conjunction with, or independent of,
18 the information, information sources, or remedies and
19 capabilities available to the Franchise Tax Board for
20 purposes of administering Part 10 (commencing with
21 Section 18401), this part, Part 10.7 (commencing with
22 Section 21001), or Part 11 (commencing with Section
23 23001).

24 (e) The activities required to implement and
25 administer this part shall not interfere with the primary
26 mission of the Franchise Tax Board to administer Part 10
27 (commencing with Section 17001) and Part 11
28 (commencing with Section 23001).

29 (f) For amounts referred for collection under
30 subdivision (a), interest shall accrue at the greater of the
31 rate applicable to the amount due being collected or the
32 rate provided under Section 19521. When notice of the
33 amount due includes interest and is mailed to the obligor
34 and the amount is paid within 10 days after the date of
35 notice, interest shall not be imposed for the period after
36 the date of notice.

37 (g) In no event shall a collection under this article be
38 construed as a payment of income taxes imposed under
39 Part 10 (commencing with Section 17001) or Part 11
40 (commencing with Section 23001).

1 SEC. 37. Section 19282 of the Revenue and Taxation
2 Code is amended to read:

3 19282. (a) Except as otherwise provided in
4 subdivision (e), amounts collected under this article shall
5 be transmitted to the Treasurer and deposited in the
6 State Treasury to the credit of the Court Collection
7 Account in the General Fund, which is hereby created.
8 Amounts deposited in the Court Collection Account shall,
9 less an amount that is equal to the costs incurred by the
10 Franchise Tax Board in administering the program
11 authorized by this article, be transferred by the
12 Controller either to the county or to the state fund to
13 which the amount due was originally owing or as
14 otherwise directed by contractual agreement. If the
15 amount collected is not sufficient to satisfy the amounts
16 referred for collection pursuant to Section 19280 that are
17 to be paid by an offender, then the amount paid shall be
18 allocated for distribution on a pro rata basis, as defined in
19 subdivision (d). The amount that is equal to the costs
20 incurred by the Franchise Tax Board in administering the
21 program authorized by this article shall be transferred by
22 the Controller to the General Fund for the purpose of
23 recovering the amount expended by the Franchise Tax
24 Board from General Fund appropriations for the purpose
25 of implementing and administering the program
26 authorized by this article, and related statutes as added or
27 amended by the act adding this article.

28 (b) It is the intent of the Legislature that costs to the
29 Franchise Tax Board to administer this article for the
30 1995–96 and 1996–97 fiscal years not exceed 9 percent of
31 the amount it collects pursuant to this article. It is also the
32 intent of the Legislature that for the 1997–98 fiscal year
33 and thereafter this percentage decrease to 5 percent. If
34 the Franchise Tax Board projects that its costs will exceed
35 these percentages for a given fiscal year, it shall report to
36 the Legislature and the Department of Finance the
37 reasons for the excess costs and the consequences of not
38 funding these excess costs.

39 (c) Notwithstanding Section 13340 of the Government
40 Code, all moneys deposited in the Court Collection

1 Account pursuant to this section are hereby continuously
2 appropriated, without regard to fiscal years, for purposes
3 of making distributions pursuant to subdivision (a).

4 (d) For purposes of this section, “pro rata basis” means
5 a distribution determined as follows: the sum of the
6 amounts referred for collection pursuant to Section 19280
7 to be paid by an offender shall be allocated and
8 distributed in the same proportion that each of the
9 elements has to the sum.

10 (e) For amounts collected pursuant to a restitution
11 fine or restitution order, subdivision (a) is modified to
12 require the deposit and disbursement of funds collected
13 under this article to be in accordance with the laws
14 relating to reimbursement of the State Restitution Fund.

15 SEC. 38. Section 19301 of the Revenue and Taxation
16 Code is amended to read:

17 19301. (a) If the Franchise Tax Board or the board, as
18 the case may be, finds that there has been an
19 overpayment of any liability imposed under Part 10
20 (commencing with Section 17001), Part 11 (commencing
21 with Section 23001), or this part by a taxpayer for any year
22 for any reason, the amount of the overpayment may be
23 credited against any amount then due from the taxpayer
24 and the balance shall be refunded to the taxpayer.

25 (b) In the case of a joint return filed under Section
26 18521, the amount of the overpayment may be credited
27 against the amount then due from both taxpayers and the
28 balance shall be refunded to both taxpayers in the names
29 under which the return was paid.

30 (c) In the case of a corporation, the balance shall be
31 refunded to the taxpayer or its successor through
32 reorganization, merger, or consolidation, or to its
33 shareholders upon dissolution.

34 SEC. 39. Section 19340 of the Revenue and Taxation
35 Code is amended to read:

36 19340. Interest shall be allowed and paid on any
37 overpayment in respect of any tax, at the adjusted annual
38 rate established pursuant to Section 19521 as follows:

39 (a) In the case of a credit, from the date of the
40 overpayment to the due date of the amount for which the

1 credit is allowed. Any interest allowed on any credit shall
2 first be credited on any amounts due from the taxpayer
3 under Part 10 (commencing with Section 17001), this
4 part, or Part 11 (commencing with Section 23001).

5 (b) In the case of a refund, including a refund in excess
6 of tax liability as prescribed in subdivision (j) of Section
7 17053.5, from the date of the overpayment to a date
8 preceding the date of the refund warrant by not more
9 than 30 days, the date to be determined by the Franchise
10 Tax Board.

11 SEC. 40. Section 19392 of the Revenue and Taxation
12 Code is amended to read:

13 19392. If judgment is rendered against the Franchise
14 Tax Board, the amount thereof shall first be credited
15 against any taxes and interest due from the taxpayer and
16 the remainder refunded to the taxpayer or his or her trust
17 or estate, or in the case of a corporation, its successor
18 through reorganization, merger, or consolidation, or its
19 stockholders upon dissolution, by the Treasurer on
20 warrants drawn by the Controller.

21 SEC. 41. Section 19411 of the Revenue and Taxation
22 Code is amended to read:

23 19411. The Franchise Tax Board may recover any
24 refund or credit or any portion thereof which is
25 erroneously made or allowed, together with interest at
26 the adjusted annual rate established pursuant to Section
27 19521 from the date demand for recovery was made, in an
28 action brought in a court of competent jurisdiction in the
29 County of Sacramento in the name of the people of the
30 State of California within whichever of the following
31 period expires the later:

32 (a) Two years after the refund or credit was made.

33 (b) During the period within which the Franchise Tax
34 Board may mail a notice of proposed additional
35 assessment.

36 (c) In the case of a corporation, interest shall be
37 computed from the date the refund was made or the
38 credit allowed, instead of the date a demand for recovery
39 was made.

1 SEC. 42. Section 19532 of the Revenue and Taxation
2 Code is amended and renumbered to read:

3 19533. In the event the debtor has more than one debt
4 being collected by the Franchise Tax Board and the
5 amount collected by the Franchise Tax Board is
6 insufficient to satisfy the total amount owing, the amount
7 collected shall be applied in the following priority:

8 (a) Payment of any taxes, additions to tax, penalties,
9 interest, fees, or other amounts due and payable under
10 Part 10 (commencing with Section 17001), Part 11
11 (commencing with Section 23001), or this part.

12 (b) Payment of any debts referred for collection under
13 Article 5 (commencing with Section 19271) of Chapter 5.

14 (c) Payment of delinquent wages collected pursuant
15 to the Labor Code.

16 (d) Payment of delinquencies collected under Section
17 10878.

18 (e) Payment of any amounts due that are referred for
19 collection under Article 5.5 (commencing with Section
20 19280) of Chapter 5.

21 (f) Payment of any amounts that are referred for
22 collection pursuant to Section 62.9 of the Labor Code.

23 (g) Payment of delinquent penalties collected for the
24 Department of Industrial Relations pursuant to the Labor
25 Code.

26 (h) Payment of delinquent fees collected for the
27 Department of Industrial Relations pursuant to the Labor
28 Code.

29 (i) Payment of delinquencies referred by the Student
30 Aid Commission pursuant to Section 16583.5 of the
31 Government Code.

32 SEC. 43. Section 19542 of the Revenue and Taxation
33 Code is amended to read:

34 19542. Except as otherwise provided in this article
35 and as required to administer subdivision (b) of Section
36 19005, it is a misdemeanor for the Franchise Tax Board or
37 any member thereof, or any deputy, agent, clerk, or other
38 officer or employee of the state (including its political
39 subdivisions), or any former officer or employee or other
40 individual, who in the course of his or her employment or

1 duty has or had access to returns, reports, or documents
2 required to be filed under this part, to disclose or make
3 known in any manner information as to the amount of
4 income or any particulars (including the business affairs
5 of a corporation) set forth or disclosed therein.

6 SEC. 44. Section 19563 of the Revenue and Taxation
7 Code is amended to read:

8 19563. This article does not prohibit the publication of
9 statistics, so classified as to prevent the identification of
10 particular reports or returns and the items thereof, or the
11 publication of the percentage of dividends paid by any
12 corporation that is deductible by the recipient under Part
13 11 (commencing with Section 23001).

14 SEC. 45. Section 19701 of the Revenue and Taxation
15 Code is amended to read:

16 19701. Any person who does any of the following is
17 liable for a penalty of not more than five thousand dollars
18 (\$5,000):

19 (a) With or without intent to evade any requirement
20 of Part 10 (commencing with Section 17001), Part 11
21 (commencing with Section 23001), or this part or any
22 lawful requirement of the Franchise Tax Board, fails to
23 file any return or to supply any information required, or
24 who, with or without ~~such~~ *that* intent, makes, renders,
25 signs, or verifies any false or fraudulent return or
26 statement, or supplies any false or fraudulent
27 information.

28 (b) Aids, abets, advises, encourages, or counsels any
29 person to evade the tax imposed by Part 10 (commencing
30 with Section 17001) or Part 11 (commencing with Section
31 23001) by not filing any return or supplying any
32 information required under Part 10 (commencing with
33 Section 17001), Part 11 (commencing with Section
34 23001), or this part, or, by making, rendering, signing, or
35 verifying any false or fraudulent return or statement, or
36 by supplying false or fraudulent information.

37 (c) Under this part, is required to pay any estimated
38 tax or tax, who willfully fails to pay that estimated tax or
39 tax, at the time or times required by law or regulations.

1 The penalty shall be recovered in the name of the
2 people in any court of competent jurisdiction. Counsel for
3 the Franchise Tax Board may, upon request of the district
4 attorney or other prosecuting attorney, assist the
5 prosecuting attorney in presenting the law or facts to
6 recover the penalty at the trial of a criminal proceeding
7 for violation of this section.

8 That person is also guilty of a misdemeanor and shall
9 upon conviction be fined not to exceed five thousand
10 dollars (\$5,000) or be imprisoned not to exceed one year,
11 or both, at the discretion of the court, together with costs
12 of investigation and prosecution.

13 (d) For purposes of subdivision (a), the president of a
14 corporation, or the chief operating officer, is the person
15 presumed to be responsible for filing any return or
16 supplying information required from that corporation.

17 SEC. 46. Section 19705 of the Revenue and Taxation
18 Code is amended to read:

19 19705. (a) Any person who does any of the following
20 shall be guilty of a felony and, upon conviction, shall be
21 fined not more than fifty thousand dollars (\$50,000) or
22 imprisoned not more than three years, or both, together
23 with the costs of investigation and prosecution:

24 (1) Willfully makes and subscribes any return,
25 statement, or other document, that contains or is verified
26 by a written declaration that it is made under penalty of
27 perjury, and he or she does not believe to be true and
28 correct as to every material matter.

29 (2) Willfully aids or assists in, or procures, counsels, or
30 advises the preparation or presentation under, or in
31 connection with any matter arising under, the Personal
32 Income Tax Law or the Bank and Corporation Tax Law,
33 of a return, affidavit, claim, or other document, that is
34 fraudulent or is false as to any material matter, whether
35 or not that falsity or fraud is with the knowledge or
36 consent of the person authorized or required to present
37 that return, affidavit, claim, or document.

38 (3) Simulates or falsely or fraudulently executes or
39 signs any bond, permit, entry, or other document
40 required by the provisions of the Personal Income Tax

1 Law or the Bank and Corporation Tax Law, or by any
2 regulation pursuant to that law, or procures the same to
3 be falsely or fraudulently executed or advises, aids in, or
4 connives at that execution.

5 (4) Removes, deposits, or conceals, or is concerned in
6 removing, depositing, or concealing, any goods or
7 commodities for or in respect whereof any tax is or shall
8 be imposed, or any property upon which levy is
9 authorized by Chapter 5 (commencing with Section
10 19201); or Chapter 8 (commencing with Section 688.010)
11 of Division 1 of, and Chapter 5 (commencing with Section
12 706.010) of Division 2 of, Title 9 of the Code of Civil
13 Procedure, with intent to evade or defeat the assessment
14 or collection of any tax, additions to tax, penalty, or
15 interest imposed by Part 10 (commencing with Section
16 17001), Part 11 (commencing with Section 23001), or this
17 part.

18 (5) In connection with any settlement under Section
19 19442, or offer of that settlement, or in connection with
20 any closing agreement under Section 19441 or offer to
21 enter into that agreement, willfully does any of the
22 following:

23 (A) Conceals from any officer or employee of this state
24 any property belonging to the estate of a taxpayer or
25 other person liable in respect of the tax.

26 (B) Receives, withholds, destroys, mutilates, or
27 falsifies any book, document, or record, or makes any false
28 statement, relating to the estate or financial condition of
29 the taxpayer or other person liable in respect of the tax.

30 (b) In the case of a corporation, the fifty thousand
31 dollars (\$50,000) limitation specified in subdivision (a)
32 shall be increased to two hundred thousand dollars
33 (\$200,000).

34 (c) The fact that an individual's name is signed to a
35 return, statement, or other document filed, including a
36 return, statement, or other document filed using
37 electronic technology pursuant to Section 18621.5, shall
38 be prima facie evidence for all purposes that the return,
39 statement, or other document was actually signed by him
40 or her.

1 (d) For purposes of this section “person” means the
2 taxpayer, any member of the taxpayer’s family, any
3 corporation, agent, fiduciary, or representative of, or any
4 other individual or entity acting on behalf of, the
5 taxpayer, or any other corporation or entity owned or
6 controlled by the taxpayer, directly or indirectly, or
7 which owns or controls the taxpayer, directly or
8 indirectly.

9 SEC. 47. Section 19706 of the Revenue and Taxation
10 Code is amended to read:

11 19706. Any person or any officer or employee of any
12 corporation who, within the time required by or under
13 the provisions of this part, willfully fails to file any return
14 or to supply any information with intent to evade any tax
15 imposed by Part 10 (commencing with Section 17001) or
16 Part 11 (commencing with Section 23001), or who,
17 willfully and with like intent, makes, renders, signs, or
18 verifies any false or fraudulent return or statement or
19 supplies any false or fraudulent information, is punishable
20 by imprisonment in the county jail not to exceed one year,
21 or in the state prison, or by fine of not more than twenty
22 thousand dollars (\$20,000), or by both the fine and
23 imprisonment, at the discretion of the court, together
24 with the costs of investigation and prosecution.

25 SEC. 48. Section 19719 of the Revenue and Taxation
26 Code is amended to read:

27 19719. Any person who attempts or purports to
28 exercise the powers, rights, and privileges of a
29 corporation that has been suspended pursuant to Section
30 23301 or who transacts or attempts to transact intrastate
31 business in this state on behalf of a foreign corporation,
32 the rights and privileges of which have been forfeited
33 pursuant to the section, is punishable by a fine of not less
34 than two hundred fifty dollars (\$250) and not exceeding
35 one thousand dollars (\$1,000), or by imprisonment not
36 exceeding one year, or both fine and imprisonment.

37 SEC. 49. Section 23037 of the Revenue and Taxation
38 Code is amended to read:

39 23037. “Taxpayer” means any person subject to the
40 tax imposed under Chapter 2 (commencing with Section

1 23101), Chapter 2.5 (commencing with Section 23400), or
2 Chapter 3 (commencing with Section 23501), of this part.

3 SEC. 50. Section 23038 of the Revenue and Taxation
4 Code is amended to read:

5 23038. (a) “Corporation” includes every corporation
6 except corporations expressly exempt from the tax by this
7 part or the Constitution of this state.

8 (b) (1) For the purposes of the tax imposed under
9 Chapter 3 (commencing with Section 23501),
10 “corporation” also includes associations ~~—(including~~
11 ~~nonprofit associations that perform services, borrow~~
12 ~~money or own property), other than banking~~
13 ~~associations, and Massachusetts or business trusts. For the~~
14 ~~purposes of this part, a Massachusetts or business trust~~
15 ~~includes every business organization consisting~~
16 ~~essentially of an arrangement whereby property is~~
17 ~~conveyed to one, or more than one, trustee for purposes~~
18 ~~other than the mere conservation of assets, collecting and~~
19 ~~disbursing of fixed or periodic income, or the securing of~~
20 ~~an obligation. , excluding banking associations and~~
21 ~~including nonprofit associations that perform services,~~
22 ~~borrow money, or own property, business trusts, and~~
23 ~~other business entities classified as associations (and~~
24 ~~taxable as corporations) under regulations of the~~
25 ~~Franchise Tax Board which, except as provided below,~~
26 ~~shall be consistent with federal regulations classifying~~
27 ~~business entities as partnerships or associations taxable as~~
28 ~~corporations, and which shall provide that classification~~
29 ~~shall be the same for state and federal purposes. Any~~
30 ~~business entity that provides limited liability for its owner~~
31 ~~under state law and that has only one owner shall be~~
32 ~~classified as an association taxable as a corporation for~~
33 ~~state purposes.~~

34 (2) In addition to the above, for purposes of the tax
35 imposed under Chapter 2 (commencing with Section
36 23101) for the purpose of exercising its franchise within
37 this state, “corporation” also includes any limited liability
38 company that is classified as an association for California
39 tax purposes.

(3) “Corporation” includes any “corporation” operated by any receiver, liquidator, referee, trustee or other officers or agents appointed by any court, or an assignee for the benefit of creditors.

“Corporation” includes any professional corporation incorporated pursuant to Part 4 (commencing with Section 13400) of Division 3 of Title 1 of the Corporations Code.

(4) Notwithstanding the above, “corporation” also includes a trust organized and operated exclusively for purposes contained in Section 23701d.

SEC. 51. Section 23040.1 of the Revenue and Taxation Code is amended to read:

23040.1. (a) Notwithstanding Sections 23040 and 25101, income derived from or attributable to sources within this state shall not include the distributive share of interest, dividends, and gains from the sale or exchange of qualifying investment securities derived by a corporation that is a partner in a partnership that qualifies as an investment partnership under Section 17955, whether or not the partnership has a usual place of business in this state, if the income from the partnership is the corporation’s only income derived from or attributable to sources within this state.

(b) Subdivision (a) shall not apply to a corporation that participates in the management of the investment activities of the investment partnership or that is engaged in a unitary business with another corporation or partnership that participates in the management of the investment activities of the partnership or has income derived from or attributable to sources within this state other than income described in subdivision (a).

(c) For purposes of this section:

(1) “Investment partnership” means a partnership that meets both of the following requirements:

(A) No less than 90 percent of the partnership’s cost of its total assets consist of qualifying investment securities, deposits at banks or other financial institutions, and office space and equipment reasonably necessary to carry on its activities as an investment partnership.

(B) No less than 90 percent of its gross income consists of interest, dividends, and gains from the sale or exchange of qualifying investment securities.

(2) (A) “Qualifying investment securities” include all of the following:

(i) Common stock, including preferred or debt securities convertible into common stock, and preferred stock.

(ii) Bonds, debentures, and other debt securities.

(iii) Foreign and domestic currency deposits or equivalents and securities convertible into foreign securities.

(iv) Mortgage- or asset-backed securities secured by federal, state, or local governmental agencies.

(v) Repurchase agreements and loan participations.

(vi) Foreign currency exchange contracts and forward and futures contracts on foreign currencies.

(vii) Stock and bond index securities and futures contracts, and other similar financial securities and futures contracts on those securities.

(viii) Options for the purchase or sale of any of the securities, currencies, contracts, or financial instruments described in clauses (i) to (vii), inclusive.

(ix) Regulated futures contracts.

(B) “Qualifying investment securities” does not include an interest in a partnership unless that partnership is itself an investment partnership.

SEC. 52. Section 23095 of the Revenue and Taxation Code is amended to read:

23095. No decree of dissolution, withdrawal, or cancellation shall be made and entered by any court, nor shall the county clerk of any county or the Secretary of State file any decree, withdrawal, or cancellation or any other document by which the term of existence of the limited liability company shall be reduced or terminated, nor shall the Secretary of State file any certificate of the surrender or cancellation by a foreign limited liability company of its rights to do intrastate business in this state unless the limited liability company obtains from the Franchise Tax Board and files from the court, county

1 clerk, or Secretary of State as the case may be, a tax
2 clearance certificate indicating that the Franchise Tax
3 Board is satisfied from the available evidence that all taxes
4 and fees imposed by this chapter have been paid or are
5 secured by bond, deposit, or otherwise. Within 30 days
6 after receiving a request for a certificate, the Franchise
7 Tax Board shall either issue the certificate or notify the
8 person requesting the certificate of the amount of tax or
9 fees that must be paid or the amount of bond, deposit, or
10 other security that must be furnished as a condition of
11 issuing the certificate. The issuance of the certificate shall
12 not relieve the taxpayer or any individual or corporation
13 from liability for any taxes, fees, penalties, or interest
14 imposed by this code. The Franchise Tax Board shall
15 furnish a copy of the tax clearance certificate to the
16 Secretary of State.

17 SEC. 53. Section 23098 of the Revenue and Taxation
18 Code is amended to read:

19 23098. No decree of dissolution, withdrawal, or
20 cancellation shall be made and entered by any court, nor
21 shall the county clerk of any county or the Secretary of
22 State file any such decree, withdrawal, or cancellation or
23 any other document by which the term of existence of the
24 registered limited liability partnership shall be reduced
25 or terminated, nor shall the Secretary of State file any
26 amended registration or notice by a foreign limited
27 liability partnership that its rights to do intrastate business
28 in this state have ceased or of its dissolution and winding
29 up, unless the registered limited liability partnership or
30 foreign limited liability partnership obtains from the
31 Franchise Tax Board and files with the court, county
32 clerk, or Secretary of State, as the case may be, a tax
33 clearance certificate indicating that the Franchise Tax
34 Board is satisfied from the available evidence that all taxes
35 imposed by this chapter have been paid or are secured by
36 bond, deposit, or otherwise. Within 30 days after
37 receiving a request for a certificate, the Franchise Tax
38 Board shall either issue the certificate or notify the person
39 requesting the certificate of the amount of tax or fees that
40 must be paid or the amount of bond, deposit, or other

1 security that must be furnished as a condition of issuing
2 the certificate. The issuance of the certificate shall not
3 relieve the taxpayer or any individual or corporation from
4 liability for any taxes, fees, penalties, or interest imposed
5 by this code. The Franchise Tax Board shall furnish a copy
6 of the tax clearance certificate to the Secretary of State.

7 ~~SEC. 54. Section 23101 of the Revenue and Taxation~~
8 ~~Code is amended to read:~~

9 ~~23101. (a) “Doing business” means actively~~
10 ~~engaging in any transaction for the purpose of financial~~
11 ~~or pecuniary gain or profit. For purposes of this~~
12 ~~subdivision, doing business in this state includes, but is not~~
13 ~~limited to, owning an interest in an entity treated as a~~
14 ~~partnership for tax purposes, directly or indirectly, that is~~
15 ~~doing business in this state.~~

16 ~~(b) If ownership of an interest in an entity treated as~~
17 ~~a partnership for tax purposes that is doing business in this~~
18 ~~state is the sole source of income from sources in this state~~
19 ~~of a limited partnership, limited liability company, or~~
20 ~~limited liability partnership, then for purposes of the tax~~
21 ~~imposed on the limited partnership, limited liability~~
22 ~~company, or limited liability partnership under~~
23 ~~subdivision (a) of Section 17935, subdivision (a) of~~
24 ~~Section 17941, and subdivision (a) of Section 17948,~~
25 ~~respectively, ownership of the interest shall not be~~
26 ~~considered doing business.~~

27 ~~SEC. 55. Section 23151 of the Revenue and Taxation~~
28 ~~Code is amended to read:~~

29 ~~23151. (a) With the exception of banks and financial~~
30 ~~corporations, every corporation doing business within the~~
31 ~~limits of this state and not expressly exempted from~~
32 ~~taxation by the provisions of the Constitution of this state~~
33 ~~or by this part, shall annually pay to the state, for the~~
34 ~~privilege of exercising its corporate franchises within this~~
35 ~~state, a tax according to or measured by its net income, to~~
36 ~~be computed at the rate of 7.6 percent upon the basis of~~
37 ~~its net income for the next preceding income year, or if~~
38 ~~greater, the minimum tax specified in Section 23153.~~

1 (b) For calendar or fiscal years ending after June 30,
2 1973, the rate of tax shall be 9 percent instead of 7.6
3 percent as provided by subdivision (a).

4 (c) For calendar or fiscal years ending in 1980 to 1986,
5 inclusive, the rate of tax shall be 9.6 percent.

6 (d) For calendar or fiscal years ending in 1987 to 1996,
7 inclusive, and for any income year beginning before
8 January 1, 1997, the tax rate shall be 9.3 percent.

9 (e) For any income year beginning on or after January
10 1, 1997, the tax rate shall be 8.84 percent. The change in
11 rate provided in this subdivision shall be made without
12 proration otherwise required by Section 24251.

13 SEC. 56. Section 23151.1 of the Revenue and Taxation
14 Code is amended to read:

15 23151.1. Notwithstanding Section 23151, every
16 corporation (except banks and financial corporations)
17 doing business within the limits of this state and not
18 exempted from taxation by the provisions of the
19 Constitution of this state or by this part, shall annually pay
20 to the state for the privilege of exercising its corporate
21 franchises within this state, a tax determined as follows:

22 (a) With respect to corporations, other than those
23 described in subdivision (b), which commence doing
24 business within the state after December 31, 1971, the tax
25 for the taxable year of commencement, whether or not
26 for 12 full months, shall be the minimum franchise tax
27 prescribed in Section 23153.

28 (b) If after December 31, 1972, a corporation
29 commences to do business and ceases doing business in
30 the same taxable year, the tax for ~~such~~ that taxable year
31 shall be according to or measured by its net income for
32 ~~such~~ that year, to be computed at the rate prescribed in
33 Section 23151.

34 (c) With respect to taxable years beginning after
35 December 31, 1972, other than the year of
36 commencement described in subdivision (a) or (b) or
37 the year of cessation described in subdivision (d), the tax
38 for ~~such~~ that taxable year shall be according to or
39 measured by its net income for the next preceding

1 income year, to be computed at the rate prescribed in
2 Section 23151.

3 (d) With respect to corporations which cease doing
4 business in a taxable year beginning after December 31,
5 1972, other than those described in subdivision (b), the
6 tax for the taxable year of cessation shall be:

7 (1) According to or measured by its net income for the
8 next preceding income year, to be computed at the rate
9 prescribed in Section 23151, plus

10 (2) According to or measured by its net income for the
11 income year during which the corporation ceased doing
12 business, to be computed at the rate prescribed in Section
13 23151.

14 (e) In any event, the tax for any taxable year shall not
15 be less than the minimum tax provided for in Section
16 23153 for that taxable year.

17 SEC. 57. Section 23151.2 of the Revenue and Taxation
18 Code is amended to read:

19 23151.2. Notwithstanding Section 23151, every
20 corporation (except banks and financial corporations)
21 not exempted from taxation by the provisions of the
22 Constitution of this state or by this part which dissolves or
23 withdraws, shall pay a tax for its taxable year of dissolution
24 or withdrawal according to or measured by its net income
25 for the income year in which it ceased doing business,
26 unless that income has previously been included in the
27 measure of tax for any taxable year, to be computed at the
28 rate prescribed in Section 23151 for its taxable year of
29 dissolution or withdrawal. In any event, the tax for the
30 taxable year of its dissolution or withdrawal shall not be
31 less than the minimum tax provided for in Section 23153
32 for that taxable year.

33 SEC. 58. Section 23153 of the Revenue and Taxation
34 Code is amended to read:

35 23153. (a) Every corporation described in
36 subdivision (b) shall be subject to the minimum franchise
37 tax specified in subdivision (d) from the earlier of the
38 date of incorporation, qualification, or commencing to do
39 business within this state, until the effective date of
40 dissolution or withdrawal as provided in Section 23331 or,

1 if later, the date the corporation ceases to do business
2 within the limits of this state.

3 (b) Unless expressly exempted by this part or the
4 California Constitution, subdivision (a) shall apply to
5 each of the following:

6 (1) Every corporation that is incorporated under the
7 laws of this state.

8 (2) Every corporation that is qualified to transact
9 intrastate business in this state pursuant to Chapter 21
10 (commencing with Section 2100) of Division 1 of Title 1
11 of the Corporations Code.

12 (3) Every corporation that is doing business in this
13 state.

14 (c) The following entities are not subject to the
15 minimum franchise tax specified in this section:

16 (1) Credit unions.

17 (2) Nonprofit cooperative associations organized
18 pursuant to Chapter 1 (commencing with Section 54001)
19 of Division 20 of the Food and Agricultural Code that
20 have been issued the certificate of the board of
21 supervisors prepared pursuant to Section 54042 of the
22 Food and Agricultural Code. The association shall be
23 exempt from the minimum franchise tax for five
24 consecutive income years, commencing with the first
25 income year for which the certificate is issued pursuant
26 to subdivision (b) of Section 54042 of the Food and
27 Agricultural Code. This paragraph only applies to
28 nonprofit cooperative associations organized on or after
29 January 1, 1994.

30 ~~(3) Any corporation that is not organized or registered~~
31 ~~in this state and that has as its sole source of income from~~
32 ~~sources in this state an interest as a partner or member in~~
33 ~~an entity treated as a partnership for tax purposes that is~~
34 ~~doing business in this state.~~

35 (d) (1) Except as provided in paragraph (2),
36 corporations subject to the minimum franchise tax shall
37 pay annually to the state a minimum franchise tax of eight
38 hundred dollars (\$800).

39 (2) The minimum franchise tax shall be twenty-five
40 dollars (\$25) for each of the following:

1 (A) A corporation formed under the laws of this state
2 whose principal business when formed was gold mining,
3 which is inactive and has not done business within the
4 limits of the state since 1950.

5 (B) A corporation formed under the laws of this state
6 whose principal business when formed was quicksilver
7 mining, which is inactive and has not done business
8 within the limits of the state since 1971, or has been
9 inactive for a period of 24 consecutive months or more.

10 (3) For purposes of paragraph (2), a corporation shall
11 not be considered to have done business if it engages in
12 other than mining.

13 (e) Notwithstanding subdivision (a), a domestic
14 corporation, as defined in Section 167 of the Corporations
15 Code, that files a certificate of dissolution in the office of
16 the Secretary of State pursuant to subdivision (c) of
17 Section 1905 of the Corporations Code and that does not
18 thereafter do business shall not be subject to the
19 minimum franchise tax for income years beginning on or
20 after the date of that filing.

21 (f) The minimum franchise tax imposed by paragraph
22 (1) of subdivision (d) shall not be increased by the
23 Legislature by more than 10 percent during any calendar
24 year.

25 SEC. 59. Section 23183.1 of the Revenue and Taxation
26 Code is amended to read:

27 23183.1. Notwithstanding Section 23183, every
28 financial corporation doing business within the limits of
29 this state and not exempted from taxation by the
30 Constitution of this state or by this part, shall annually pay
31 to the state for the privilege of exercising its corporate
32 franchises within this state, a tax determined as follows:

33 (a) If a financial corporation commences to do
34 business and ceases doing business in the same taxable
35 year, the tax for that taxable year shall be according to or
36 measured by its net income for that year, at the rate
37 provided under Section 23186.

38 (b) With respect to taxable years other than the year
39 of commencement described in subdivision (a) or the
40 year of cessation described in subdivision (c), a tax

1 according to or measured by its net income, to be
2 computed at the rate prescribed in Section 23186 upon
3 the basis of its net income for the next preceding income
4 year.

5 (c) With respect to financial corporations, which cease
6 doing business in a taxable year other than those
7 described in subdivision (a), the tax for the taxable year
8 of cessation shall be:

9 (1) According to or measured by its net income for the
10 next preceding income year to be computed at the rate
11 prescribed in Section 23186, plus

12 (2) According to or measured by its net income for the
13 income year during which the financial corporation
14 ceased doing business, to be computed at the rate
15 prescribed in Section 23186.

16 SEC. 60. Section 23183.2 of the Revenue and Taxation
17 Code is amended to read:

18 23183.2. Notwithstanding Section 23183, every
19 financial corporation not exempted from taxation by the
20 provisions of the Constitution of this state or by this part
21 which dissolves or withdraws, shall pay a tax for its taxable
22 year of dissolution or withdrawal according to or
23 measured by its net income for the income year in which
24 it ceased doing business, to be computed at the rate
25 prescribed in Section 23186 for its taxable year of
26 dissolution or withdrawal, unless the income has
27 previously been included in the measure of tax for any
28 taxable year.

29 SEC. 61. Section 23184 of the Revenue and Taxation
30 Code is repealed.

31 SEC. 62. Section 23184.5 of the Revenue and Taxation
32 Code is repealed.

33 SEC. 63. Section 23185 of the Revenue and Taxation
34 Code is repealed.

35 SEC. 64. Section 23185a of the Revenue and Taxation
36 Code is repealed.

37 SEC. 65. Section 23185b of the Revenue and Taxation
38 Code is repealed.

39 SEC. 66. Section 23186 of the Revenue and Taxation
40 Code is amended to read:

1 23186. For income years ending on or after December
2 31, 1995, the rate of tax on banks and financial
3 corporations shall be the rate of tax specified in Section
4 23151, plus 2 percent.

5 SEC. 67. Section 23186.1 of the Revenue and Taxation
6 Code is repealed.

7 SEC. 68. Section 23186.2 of the Revenue and Taxation
8 Code is repealed.

9 SEC. 69. Section 23186.5 of the Revenue and Taxation
10 Code is repealed.

11 SEC. 70. Section 23221 of the Revenue and Taxation
12 Code is amended to read:

13 23221. (a) Except as provided under subdivision (b),
14 a corporation which incorporates under the laws of this
15 state or qualifies to transact intrastate business in this
16 state shall thereupon prepay the minimum tax provided
17 in Section 23153, except that any credit union shall
18 thereupon prepay a tax of twenty-five dollars (\$25). The
19 prepayment shall be made to the Secretary of State with
20 the filing of the articles of incorporation or the statement
21 and designation by foreign corporation. The Secretary of
22 State shall transmit the amount of the prepayment to the
23 Franchise Tax Board. The Franchise Tax Board shall
24 certify to the Secretary of State on an individual or class
25 basis those domestic or foreign corporations which are
26 exempt from prepayment or for which prepayment to
27 the Secretary of State is waived.

28 (b) For income years commencing on or after January
29 1, 1997, the amount payable by a qualified new
30 corporation under subdivision (a) shall be six hundred
31 dollars (\$600).

32 (c) For purposes of this section, “qualified new
33 corporation” means a corporation that reasonably
34 estimates that, for the income year, it will have both gross
35 receipts, less returns and allowances reportable to this
36 state, of one million dollars (\$1,000,000) or less and a tax
37 liability under Section 23151 that does not exceed eight
38 hundred dollars (\$800).

39 (1) The determination of gross receipts of a
40 corporation, for purposes of this section, shall be made by

1 including the gross receipts of each member of the
2 commonly controlled group, as defined in Section 25105,
3 of which the bank or corporation is a member.

4 (2) “Gross receipts, less returns and allowances
5 reportable to this state” means the sum of the gross
6 receipts from the production of business income, as
7 defined in subdivision (a) of Section 25120, and the gross
8 receipts from the production of nonbusiness income, as
9 defined in subdivision (d) of Section 25120.

10 (d) Subdivision (b) shall not apply to any corporation
11 if 50 percent or more of its stock is, or will be upon the
12 initial issuance of stock, owned by another corporation.

13 (e) For income years commencing on or after January
14 1, 1997, if a corporation paid six hundred dollars (\$600)
15 under subdivision (b), but for its first income year the
16 corporation’s tax liability under Section 23151 exceeds
17 eight hundred dollars (\$800), or the corporation’s gross
18 receipts, as determined under paragraph (2) of
19 subdivision (c), exceed one million dollars (\$1,000,000),
20 an additional tax in the amount equal to two hundred
21 dollars (\$200) shall be due and payable by the corporation
22 on the due date of its return, without regard to extension,
23 for its first income year.

24 SEC. 71. Section 23303 of the Revenue and Taxation
25 Code is amended to read:

26 23303. Notwithstanding the provisions of Section
27 23301 or 23301.5, any corporation that transacts business
28 or receives income within the period of its suspension or
29 forfeiture shall be subject to tax under the provisions of
30 this chapter.

31 SEC. 72. Section 23305.2 of the Revenue and Taxation
32 Code is amended to read:

33 23305.2. Notwithstanding Sections 23305 and 23305.1
34 that require a taxpayer to pay any liability to the
35 Franchise Tax Board as a condition to revivor or relief
36 from voidability, the Franchise Tax Board shall issue a
37 certificate of revivor under Section 23305, or of relief
38 from voidability under Section 23305.1, if the taxpayer
39 provides the Franchise Tax Board with an assumption of
40 liability, or a bond, deposit, or other security for

1 taxpayer's liability, that is acceptable to the Franchise Tax
2 Board. The Franchise Tax Board shall notify the person
3 filing the application for revivor or relief from voidability
4 of the amount of the bond, deposit, or other security, or
5 of the terms of an assumption of liability, that must be
6 furnished as a condition of the revivor or the relief from
7 voidability. Obtaining revivor or voidability relief by
8 securing the debt pursuant to this section shall not
9 constitute an admission of liability by the taxpayer, nor
10 relieve the taxpayer or any individual or corporation from
11 liability for any taxes, additions to tax, penalties, or
12 interest imposed by this part. A taxpayer that provides an
13 assumption of liability or a bond, deposit, or other security
14 to obtain revivor or relief from voidability may,
15 notwithstanding Section 23305 or 23305.1, file any returns
16 required under those sections within a reasonable time
17 after relief is granted by the Franchise Tax Board.

18 SEC. 73. Section 23332 of the Revenue and Taxation
19 Code is amended to read:

20 23332. (a) Except in the case of a taxpayer subject to
21 the provisions of Section 23222a, any taxpayer which is
22 dissolved or withdraws from the state during any taxable
23 year shall pay a tax only for the months of the taxable year
24 which precede the effective date of the dissolution or
25 withdrawal, according to or measured by (1) the net
26 income of the preceding income year or (2) a percentage
27 of net income determined by ascertaining the ratio which
28 the months of the taxable year, preceding the effective
29 date of dissolution or withdrawal, bears to the months of
30 the income year, whichever is the lesser amount. The
31 taxes levied under this chapter shall not be subject to
32 abatement or refund because of the cessation of business
33 or corporate existence of any taxpayer pursuant to a
34 reorganization, consolidation, or merger (as defined by
35 Section 23251). In any event, each corporation shall pay
36 a tax not subject to offset for the period in an amount
37 equal to the minimum tax prescribed by Section 23153.

38 (b) The provisions of subdivision (a) shall be applied
39 only with respect to taxpayers which dissolve or withdraw
40 before January 1, 1973. On and after that date, the tax for

1 the taxable year in which the taxpayer ceases doing
2 business, dissolves or withdraws shall be determined
3 under the appropriate provisions of Section 23151.1,
4 23153, 23181, or 23183, whichever is applicable. However,
5 if all of the following conditions are satisfied, a minimum
6 franchise tax shall not be imposed with respect to the
7 taxable year in which a tax clearance certificate is issued
8 by the Franchise Tax Board:

9 (1) The taxpayer does not do business in this state at
10 any time during that taxable year.

11 (2) The taxpayer files a certificate of dissolution with
12 the Secretary of State prior to the beginning of that
13 taxable year, in accordance with Section 1905 of the
14 Corporations Code.

15 SEC. 74. Section 23332.5 of the Revenue and Taxation
16 Code is amended to read:

17 23332.5. If a financial corporation ceases doing
18 business, dissolves, or withdraws from the state during
19 any taxable year, the tax for the taxable year during which
20 cessation of doing business, dissolution or withdrawal
21 occurs shall be computed as prescribed by subdivision (b)
22 or (d) of Section 23183, 23183.1, or 23183.2.

23 SEC. 75. Section 23334 of the Revenue and Taxation
24 Code is amended to read:

25 23334. No decree of dissolution shall be made and
26 entered by any court, nor shall the county clerk of any
27 county or the Secretary of State file any such decree, or
28 file in the case of a credit union incorporated under the
29 California Credit Union Law a certificate of election to
30 dissolve, or in the case of any other taxpayer file a
31 certificate of dissolution, except as provided in
32 subdivision (c) of Section 1905 of the Corporations Code,
33 or any other document by which the term of existence of
34 the taxpayer shall be reduced or terminated, nor shall the
35 Secretary of State file any certificate of the surrender by
36 a foreign corporation of its right to do intrastate business
37 in this state unless the taxpayer obtains from the
38 Franchise Tax Board and files with the court, county
39 clerk, or Secretary of State as the case may be, a tax
40 clearance certificate indicating that the Franchise Tax

1 Board is satisfied from the available evidence that all taxes
2 imposed by this chapter have been paid or are secured by
3 bond, deposit, or otherwise. Within 30 days after
4 receiving a request for a certificate, the Franchise Tax
5 Board shall either issue the certificate or notify the person
6 requesting the certificate of the amount of tax that must
7 be paid or the amount of bond, deposit, or other security
8 that must be furnished as a condition of issuing the
9 certificate. The issuance of the certificate shall not relieve
10 the taxpayer or any individual or corporation from
11 liability for any taxes, penalties, or interest imposed by
12 this part, nor shall the issuance of the certificate in the
13 case of any credit union which revokes its election to wind
14 up and dissolve, relieve that credit union of any taxes or
15 interest that would have been imposed under this part
16 had the election not been filed.

17 The Franchise Tax Board shall furnish a copy of the tax
18 clearance certificate to the Secretary of State.

19 SEC. 76. Section 23455 of the Revenue and Taxation
20 Code is amended to read:

21 23455. For purposes of this part, Section 55 of the
22 Internal Revenue Code is modified as follows:

23 (a) Section 55(b)(1) of the Internal Revenue Code,
24 relating to tentative minimum tax, is modified by
25 requiring the tentative minimum tax for the taxable year
26 to be imposed as follows:

27 (1) With respect to corporations subject to tax under
28 Chapter 2 (commencing with Section 23101), other than
29 banks or financial corporations, according to or measured
30 by net income, for the privilege of doing business within
31 this state, at a rate of 7 percent upon the basis of so much
32 of the alternative minimum taxable income for the
33 taxable year as exceeds the exemption amount.

34 (2) With respect to corporations subject to tax under
35 Chapter 3 (commencing with Section 23501), on net
36 income from sources within this state, at a rate of 7
37 percent upon the basis of so much of the alternative
38 minimum taxable income for the taxable year as exceeds
39 the exemption amount.

(3) With respect to organizations or trusts subject to tax under Article 2 (commencing with Section 23731) of Chapter 4, on the unrelated business income from sources within this state, at a rate of 7 percent upon the basis of so much of the alternative taxable income for the taxable year as exceeds the exemption amount.

(4) With respect to banks subject to tax under Section 23181, according to or measured by net income, for the privilege of doing business within this state, in an amount equal to the sum of the following:

(A) At a rate of 7 percent upon the basis of so much of the alternative minimum taxable income as exceeds the exemption amount.

(B) At the rate determined under Section 23186, less the rate prescribed by Section 23151, upon the basis of net income for the taxable year.

(5) With respect to financial corporations subject to tax under Section 23183, according to or measured by net income, for the privilege of doing business within this state, in an amount equal to the sum of the following:

(A) At a rate of 7 percent upon the basis of so much of the alternative minimum taxable income as exceeds the exemption amount.

(B) At the rate determined under Section 23186, less the rate prescribed by Section 23151, upon the basis of net income for the taxable year.

(b) Section 55(b)(2) of the Internal Revenue Code, relating to the definition of alternative minimum taxable income, is modified as follows:

(1) For corporations whose net income is determined under Chapter 17 (commencing with Section 25101), alternative minimum taxable income shall be allocated and apportioned in the same manner as net income is allocated and apportioned for purposes of the regular tax.

(2) With respect to taxpayers subject to Article 4 (commencing with Section 23221) of Chapter 2, Article 4 (commencing with Section 23221) to Article 9 (commencing with Section 23361), inclusive, shall apply to the tax imposed by this section except that Section 23221 shall not apply.

1 (3) For purposes of computing the alternative
2 minimum tax for taxable years in which a taxpayer
3 commenced doing business, dissolves, withdraws, or
4 ceases doing business, Sections 18601, 23151, 23151.1,
5 23151.2, 23181, 23183, 23183.1, 23183.2, 23201 to 23204,
6 inclusive, 23222 to 23224.5, inclusive, 23282, 23332.5, and
7 23504 shall be applied with due regard for the rate and
8 alternative minimum taxable income prescribed by this
9 chapter.

10 (c) Section 55(c) of the Internal Revenue Code,
11 relating to the definition of regular tax, is modified to
12 read:

13 (1) For purposes of this chapter, “regular tax” means
14 the amount of tax imposed under Chapter 2
15 (commencing with Section 23101) or Chapter 3
16 (commencing with Section 23501) or Article 2
17 (commencing with Section 23731) of Chapter 4, but does
18 not include any amount imposed under paragraph (1) of
19 subdivision (e) of Section 24667 or paragraph (2) of
20 subdivision (f) of Section 24667.

21 (2) The tax specified in paragraph (1) shall be the
22 amount determined prior to reduction by any credits
23 against the tax.

24 (d) The rate of 7 percent prescribed in subdivision (a)
25 shall be 6.65 percent for any income year beginning on or
26 after January 1, 1997. The change in rate provided in this
27 subdivision shall be made without proration otherwise
28 required by Section 24251.

29 SEC. 77. Section 23501 of the Revenue and Taxation
30 Code is amended to read:

31 23501. (a) There shall be imposed upon every
32 corporation, other than a bank, for each taxable year, a tax
33 at the rate of 7.6 percent upon its net income derived
34 from sources within this state on or after January 1, 1937,
35 other than income for any period for which the
36 corporation is subject to taxation under Chapter 2
37 (commencing with Section 23101), according to or
38 measured by its net income.

1 (b) For calendar or fiscal years ending after June 30,
2 1973, the rate of tax shall be 9 percent instead of 7.6
3 percent as provided by subdivision (a).

4 (c) For calendar or fiscal years ending after December
5 31, 1979, the rate of tax shall be the rate specified for those
6 years by Section 23151.

7 SEC. 78. Section 23610.5 of the Revenue and Taxation
8 Code is amended to read:

9 23610.5. (a) (1) There shall be allowed as a credit
10 against the "tax" (as defined by Section 23036) a state
11 low-income housing tax credit in an amount equal to the
12 amount determined in subdivision (c), computed in
13 accordance with Section 42 of the Internal Revenue Code
14 of 1986, except as otherwise provided in this section.

15 (2) "Taxpayer," for purposes of this section, means the
16 sole owner in the case of a C corporation, the partners in
17 the case of a partnership, and the shareholders in the case
18 of an S corporation.

19 (3) "Housing sponsor," for purposes of this section,
20 means the sole owner in the case of a C corporation, the
21 partnership in the case of a partnership, and the S
22 corporation in the case of an S corporation.

23 (b) (1) The amount of the credit allocated to any
24 housing sponsor shall be authorized by the California Tax
25 Credit Allocation Committee, or any successor thereof,
26 based on a project's need for the credit for economic
27 feasibility in accordance with the requirements of this
28 section.

29 (A) The low-income housing project shall be located
30 in California and shall meet either of the following
31 requirements:

32 (i) The project's housing sponsor shall have been
33 allocated by the California Tax Credit Allocation
34 Committee a credit for federal income tax purposes
35 under Section 42 of the Internal Revenue Code.

36 (ii) It shall qualify for a credit under Section
37 42(h)(4)(B) of the Internal Revenue Code.

38 (B) The California Tax Credit Allocation Committee
39 shall not require fees for the credit under this section in
40 addition to those fees required for applications for the tax

1 credit pursuant to Section 42 of the Internal Revenue
2 Code. The committee may require a fee if the application
3 for the credit under this section is submitted in a calendar
4 year after the year the application is submitted for the
5 federal tax credit.

6 (2) (A) The California Tax Credit Allocation
7 Committee shall certify to the housing sponsor the
8 amount of tax credit under this section allocated to the
9 housing sponsor for each credit period.

10 (B) In the case of a partnership or an S corporation, the
11 housing sponsor shall provide a copy of the California Tax
12 Credit Allocation Committee certification to the
13 taxpayer.

14 (C) The taxpayer shall, upon request, provide a copy
15 of the certification to the Franchise Tax Board.

16 (D) All elections made by the taxpayer pursuant to
17 Section 42 of the Internal Revenue Code shall apply to
18 this section.

19 (E) For buildings located in designated difficult
20 development areas or qualified census tracts as defined in
21 Section 42(d)(5)(C) of the Internal Revenue Code,
22 credits may be allocated under this section in the amounts
23 prescribed in subdivision (c), provided that the amount
24 of credit allocated under Section 42 of the Internal
25 Revenue Code is computed on 100 percent of the
26 qualified basis of the building.

27 (c) Section 42(b) of the Internal Revenue Code shall
28 be modified as follows:

29 (1) In the case of any qualified low-income building
30 placed in service by the housing sponsor during 1987, the
31 term “applicable percentage” means 9 percent for each
32 of the first three years and 3 percent for the fourth year
33 for new buildings (whether or not the building is
34 federally subsidized) and for existing buildings.

35 (2) In the case of any qualified low-income building
36 that receives an allocation after 1989 and is a new building
37 not federally subsidized, the term “applicable
38 percentage” means the following:

39 (A) For each of the first three years, the percentage
40 prescribed by the Secretary of the Treasury for new

1 buildings that are not federally subsidized for the taxable
2 year, determined in accordance with the requirements of
3 Section 42(b)(2) of the Internal Revenue Code, in lieu of
4 the percentage prescribed in Section 42(b)(1)(A).

5 (B) For the fourth year, the difference between 30
6 percent and the sum of the applicable percentages for the
7 first three years.

8 (3) In the case of any qualified low-income building
9 that receives an allocation after 1989 and that is a new
10 building that is federally subsidized or that is an existing
11 building that is “at risk of conversion,” the term
12 “applicable percentage” means the following:

13 (A) For each of the first three years, the percentage
14 prescribed by the Secretary of the Treasury for new
15 buildings that are federally subsidized for the taxable
16 year.

17 (B) For the fourth year, the difference between 13
18 percent and the sum of the applicable percentages for the
19 first three years.

20 (4) For purposes of this section, the term “at risk of
21 conversion,” with respect to an existing building means
22 a building that satisfies all of the following criteria:

23 (A) The building is presently owned by a housing
24 sponsor other than a qualified nonprofit organization.

25 (B) The building is a federally assisted building for
26 which the low-income use restrictions will terminate or
27 the building is eligible for prepayment under Subtitle 13
28 of the Emergency Low Income Housing Assistance Act of
29 1987 or under Section 502(c) of the Housing Act of 1949,
30 anytime in the two calendar years after the year of
31 application to the California Tax Credit Allocation
32 Committee, and the purchaser has received preliminary
33 approval from the applicable federal agency for a
34 maximum level of incentives through a plan of action.

35 (C) The person acquiring the building enters into a
36 regulatory agreement that requires the building to be
37 operated in accordance with the requirements of this
38 section for a period equal to the greater of 55 years or the
39 life of the building.

(D) The building satisfies the requirements of Section 42(e) of the Internal Revenue Code regarding rehabilitation expenditures, except that the provisions of Section 42(e)(3)(A)(ii)(I) shall not apply.

(d) The term “qualified low-income housing project” as defined in Section 42(c)(2) of the Internal Revenue Code is modified by adding the following requirements:

(1) The taxpayer shall be entitled to receive a cash distribution from the operations of the project, after funding required reserves, which, at the election of the taxpayer, is equal to:

(A) An amount not to exceed 8 percent of the lesser of:

(i) The owner equity that shall include the amount of the capital contributions actually paid to the housing sponsor and shall not include any amounts until they are paid on an investor note; or

(ii) Twenty percent of the adjusted basis of the building as of the close of the first income year of the credit period; or

(B) The amount of the cash-flow from those units in the building that are not low-income units. For purposes of computing cash-flow under this subparagraph, operating costs shall be allocated to the low-income units using the “floor space fraction,” as defined in Section 42 of the Internal Revenue Code.

(C) Any amount allowed to be distributed under subparagraph (A) that is not available for distribution during the first five years of the compliance period may accumulate and be distributed any time during the first 15 years of the compliance period but not thereafter.

(2) The limitation on return shall apply in the aggregate to the partners if the housing sponsor is a partnership and in the aggregate to the shareholders if the housing sponsor is an S corporation.

(3) The housing sponsor shall apply any cash available for distribution in excess of the amount eligible to be distributed under paragraph (1) to reduce the rent on rent-restricted units or to increase the number of rent-restricted units subject to the tests of Section 42(g)(1) of the Internal Revenue Code.

(e) The provisions of Section 42(f) of the Internal Revenue Code shall be modified as follows:

(1) The term “credit period” as defined in Section 42(f)(1) of the Internal Revenue Code is modified by substituting “four income years” for “10 taxable years.”

(2) The special rule for the first taxable year of the credit period under Section 42(f)(2) of the Internal Revenue Code shall not apply to the tax credit under this section.

(3) Section 42(f)(3) of the Internal Revenue Code is modified to read:

If, as of the close of any income year in the compliance period, after the first year of the credit period, the qualified basis of any building exceeds the qualified basis of that building as of the close of the first year of the credit period, the housing sponsor, to the extent of its tax credit allocation, shall be eligible for a credit on the excess in an amount equal to the applicable percentage determined pursuant to subdivision (c) for the four-year period beginning with the later of the income years in which the increase in qualified basis occurs.

(f) The provisions of Section 42(h) of the Internal Revenue Code shall be modified as follows:

(1) Section 42(h)(2) of the Internal Revenue Code shall not be applicable and instead the following provisions shall be applicable:

The total amount for the four-year credit period of the housing credit dollars allocated in a calendar year to any building shall reduce the aggregate housing credit dollar amount of the California Tax Credit Allocation Committee for the calendar year in which the allocation is made.

(2) Paragraphs (3), (4), (5), (6)(E)(i)(II), (6)(F), (6)(G), (6)(I), (7), and (8) of Section 42(h) of the Internal Revenue Code shall not be applicable.

(g) The aggregate housing credit dollar amount which may be allocated annually by the California Tax Credit Allocation Committee pursuant to this section, Section 12206, and Section 17058 shall be an amount equal to the sum of the following:

1 (1) Thirty-five million dollars (\$35,000,000).

2 (2) The unused housing credit ceiling, if any, for the
3 preceding calendar years; and

4 (3) The amount of housing credit ceiling returned in
5 the calendar year. For purposes of this paragraph, the
6 amount of housing credit dollar amount returned in the
7 calendar year equals the housing credit dollar amount
8 previously allocated to any project that does not become
9 a qualified low-income housing project within the period
10 required by this section or to any project with respect to
11 which an allocation is canceled by mutual consent of the
12 California Tax Credit Allocation Committee and the
13 allocation recipient.

14 (h) The term “compliance period” as defined in
15 Section 42(i)(1) of the Internal Revenue Code is
16 modified to mean, with respect to any building, the
17 period of 30-consecutive income years beginning with the
18 first income year of the credit period with respect
19 thereto.

20 (i) Section 42(j) of the Internal Revenue Code shall
21 not be applicable and the following shall be substituted in
22 its place:

23 (1) The requirements of this section shall be set forth
24 in a regulatory agreement between the California Tax
25 Credit Allocation Committee and the housing sponsor,
26 and this agreement shall be subordinated, when required,
27 to any lien or encumbrance of any banks or other
28 institutional lenders to the project. The regulatory
29 agreement entered into pursuant to subdivision (f) of
30 Section 50199.14 of the Health and Safety Code, shall
31 apply, providing the agreement includes all of the
32 following provisions:

33 (A) A term not less than the compliance period.

34 (B) A requirement that the agreement be filed in the
35 official records of the county in which the qualified
36 low-income housing project is located.

37 (C) A provision stating which state and local agencies
38 can enforce the regulatory agreement in the event the
39 housing sponsor fails to satisfy any of the requirements of
40 this section.

(D) A provision that the regulatory agreement shall be deemed a contract enforceable by tenants as third-party beneficiaries thereto, and which allows individuals, whether prospective, present, or former occupants of the building, who meet the income limitation applicable to the building, the right to enforce the regulatory agreement in any state court.

(E) A provision incorporating the requirements of Section 42 of the Internal Revenue Code as modified by this section.

(F) A requirement that the housing sponsor notify the California Tax Credit Allocation Committee or its designee if there is a determination by the Internal Revenue Service that the project is not in compliance with Section 42(g) of the Internal Revenue Code.

(G) A requirement that the housing sponsor, as security for the performance of the housing sponsor's obligations under the regulatory agreement, assign the housing sponsor's interest in rents that it receives from the project, provided that until there is a default under the regulatory agreement, the housing sponsor is entitled to collect and retain the rents.

(H) The remedies available in the event of a default under the regulatory agreement that is not cured within a reasonable cure period, include, but are not limited to, allowing any of the parties designated to enforce the regulatory agreement to collect all rents with respect to the project; taking possession of the project and operating the project in accordance with the regulatory agreement until the enforcer determines the housing sponsor is in a position to operate the project in accordance with the regulatory agreement; applying to any court for specific performance; securing the appointment of a receiver to operate the project; or any other relief as may be appropriate.

(j) (1) The committee shall allocate the housing credit on a regular basis consisting of two or more periods in each calendar year during which applications may be filed and considered. The committee shall establish application filing deadlines, the maximum percentage of

1 federal and state low-income housing tax credit ceiling
2 that may be allocated by the committee in that period,
3 and the approximate date on which allocations shall be
4 made. If the enactment of federal or state law, the
5 adoption of rules or regulations, or other similar events
6 prevent the use of two allocation periods, the committee
7 may reduce the number of periods and adjust the filing
8 deadlines, maximum percentage of credit allocated, and
9 the allocation dates.

10 (2) The committee shall adopt a qualified allocation
11 plan, as provided in Section 42(m)(1) of the Internal
12 Revenue Code. In adopting this plan, the committee shall
13 comply with the provisions of Sections 42(m)(1)(B) and
14 42(m)(1)(C) of the Internal Revenue Code.

15 (3) Notwithstanding Section 42(m) of the Internal
16 Revenue Code, the California Tax Credit Allocation
17 Committee shall allocate housing credits in accordance
18 with the qualified allocation plan and regulations, which
19 shall include the following provisions:

20 (A) All housing sponsors, as defined by paragraph (3)
21 of subdivision (a), shall demonstrate at the time the
22 application is filed with the committee that the project
23 meets the following threshold requirements:

24 (i) The housing sponsor shall demonstrate there is a
25 need for low-income housing in the community or region
26 for which it is proposed.

27 (ii) The project's proposed financing, including tax
28 credit proceeds, shall be sufficient to complete the
29 project and shall be adequate to operate the project for
30 the extended use period.

31 (iii) The project shall have enforceable financing
32 commitments, either construction or permanent
33 financing, for at least 50 percent of the total estimated
34 financing of the project.

35 (iv) The housing sponsor shall have and maintain
36 control of the site for the project.

37 (v) The housing sponsor shall demonstrate that the
38 project complies with all applicable local land use and
39 zoning ordinances.

1 (vi) The housing sponsor shall demonstrate that the
2 project development team has the experience and the
3 financial capacity to ensure project completion and
4 operation for the extended use period.

5 (vii) The housing sponsor shall demonstrate the
6 amount of tax credit that is necessary for the financial
7 feasibility of the project and its viability as a qualified
8 low-income housing project throughout the extended use
9 period, taking into account operating expenses, a
10 supportable debt service, reserves, funds set aside for
11 rental subsidies, and required equity, and a development
12 fee that does not exceed a specified percentage of the
13 eligible basis of the project prior to inclusion of the
14 development fee in the eligible basis, as determined by
15 the committee.

16 (B) The committee shall give a preference to those
17 projects satisfying all of the threshold requirements of
18 subparagraph (A) if:

19 (i) The project serves the lowest income tenants at
20 rents affordable to those tenants; and

21 (ii) The project is obligated to serve qualified tenants
22 for the longest period.

23 (C) In addition to the provisions of subparagraphs (A)
24 and (B), the committee shall use the following criteria in
25 allocating housing credits:

26 (i) Projects serving large families in which a
27 substantial number, as defined by the committee of all
28 residential units is comprised of low-income units with
29 three and more bedrooms.

30 (ii) Projects providing single room occupancy units
31 serving very low income tenants.

32 (iii) Existing projects that are “at risk of conversion,”
33 as defined by paragraph (4) of subdivision (c).

34 (iv) Projects for which a public agency provides direct
35 or indirect long-term financial support for at least 15
36 percent of the total project development costs or projects
37 for which the owner’s equity constitutes at least 30
38 percent of the total project development costs.

1 (v) Projects that provide tenant amenities not
2 generally available to residents of low-income housing
3 projects.

4 (4) For purposes of allocating credits pursuant to this
5 section, the committee shall not give preference to any
6 project by virtue of the date of submission of its
7 application except to break a tie when two or more of the
8 projects have an equal rating.

9 (5) Not less than 20 percent of the low-income housing
10 tax credits available annually under this section, Section
11 12206, and Section 17058 shall be set aside for allocation
12 to rural areas as defined in Section 50199.21 of the Health
13 and Safety Code. Any amount of credit set aside for rural
14 areas remaining on or after October 31 of any calendar
15 year shall be available for allocation to any eligible
16 project. No amount of credit set aside for rural areas shall
17 be considered available for any eligible project so long as
18 there are eligible rural applications pending on October
19 31.

20 (k) Section 42(l) of the Internal Revenue Code shall
21 be modified as follows:

22 The term “secretary” shall be replaced by the term
23 “California Franchise Tax Board.”

24 (l) In the case where the state credit allowed under
25 this section exceeds the “tax,” the excess may be carried
26 over to reduce the “tax” in the following year, and
27 succeeding years if necessary, until the credit has been
28 exhausted.

29 (m) A project that received an allocation of a 1989
30 federal housing credit dollar amount shall be eligible to
31 receive an allocation of a 1990 state housing credit dollar
32 amount, subject to all of the following conditions:

33 (1) The project was not placed in service prior to 1990.

34 (2) To the extent the amendments made to this section
35 by the Statutes of 1990 conflict with any provisions
36 existing in this section prior to those amendments, the
37 prior provisions of law shall prevail.

38 (3) Notwithstanding paragraph (2), a project
39 applying for an allocation under this subdivision shall be

1 subject to the requirements of paragraph (3) of
2 subdivision (j).

3 (n) The credit period with respect to an allocation of
4 credit in 1989 by the California Tax Credit Allocation
5 Committee of which any amount is attributable to
6 unallocated credit from 1987 or 1988 shall not begin until
7 after December 31, 1989.

8 (o) The provisions of Section 11407(a) of Public Law
9 101-508, relating to the effective date of the extension of
10 the low-income housing credit, shall apply to calendar
11 years after 1989.

12 (p) The provisions of Section 11407(c) of Public Law
13 101-508, relating to election to accelerate credit, shall not
14 apply.

15 (q) (1) A corporation may elect to assign any portion
16 of any credit allowed under this section to one or more
17 affiliated corporations for each income year in which the
18 credit is allowed. For purposes of this subdivision,
19 “affiliated corporation” has the meaning provided in
20 subdivision (b) of Section 25110, as that section was
21 amended by Chapter 881 of the Statutes of 1993, as of the
22 last day of the income year in which the credit is allowed,
23 except that “100 percent” is substituted for “more than 50
24 percent” wherever it appears in the section, as that
25 section was amended by Chapter 881 of the Statutes of
26 1993, and “voting common stock” is substituted for
27 “voting stock” wherever it appears in the section, as that
28 section was amended by Chapter 881 of the Statutes of
29 1993.

30 (2) The election provided in paragraph (1):

31 (A) May be based on any method selected by the
32 corporation that originally receives the credit.

33 (B) Shall be irrevocable for the income year the credit
34 is allowed, once made.

35 (C) May be changed for any subsequent income year
36 if the election to make the assignment is expressly shown
37 on each of the returns of the affiliated corporations that
38 assign and receive the credits.

1 (r) Any unused credit may continue to be carried
2 forward, as provided in subdivision (k), until the credit
3 has been exhausted.

4 This section shall remain in effect on or after December
5 1, 1990, for as long as Section 42 of the Internal Revenue
6 Code, pertaining to low-income housing credits, remains
7 in effect.

8 (s) The amendments to this section made by the act
9 adding this subdivision shall apply only to income years
10 beginning on or after January 1, 1994, except that
11 paragraph (1) of subdivision (q), as amended, shall apply
12 to income years beginning on or after January 1, 1993.

13 SEC. 79. Section 23612.6 of the Revenue and Taxation
14 Code is amended to read:

15 23612.6. (a) For each income year beginning on or
16 after January 1, 1992, and before January 1, 1998, there
17 shall be allowed a credit against the "tax," as defined by
18 Section 23036, for the income year an amount equal to the
19 sales or use tax paid or incurred during the income year
20 by the taxpayer in connection with the taxpayer's
21 purchase of qualified property.

22 (b) For purposes of this section:

23 (1) "Taxpayer" means a corporation engaged in a
24 trade or business within the Los Angeles Revitalization
25 Zone designated pursuant to Section 7102 of the
26 Government Code.

27 (2) "Qualified property" means the purchase on or
28 after May 1, 1992, and before the zone expiration date, of
29 either or both of the following:

30 (A) Building materials to replace or repair the
31 taxpayer's building and fixtures.

32 (B) Machinery or equipment, excluding inventory, to
33 be used by the taxpayer exclusively in the Los Angeles
34 Revitalization Zone.

35 (3) "Zone expiration date" means the date the Los
36 Angeles Revitalization Zone designation expires, is
37 repealed, or becomes inoperative pursuant to Section
38 7102, 7103, or 7104 of the Government Code.

39 (c) If the taxpayer is allowed a credit for qualified
40 property pursuant to this section, only one credit shall be

1 allowed to the taxpayer under this part with respect to
2 that qualified property.

3 (d) In the case where the credit otherwise allowed
4 under this section exceeds the tax for the income year,
5 that portion of the credit that exceeds the tax may be
6 carried over and added to the credit, if any, in succeeding
7 income years for the number of income years in which
8 the designation of the Los Angeles Revitalization Zone
9 under Section 7102 of the Government Code is operative,
10 or 15 income years, if longer, until the credit is exhausted.
11 The credit shall be applied first to the earliest income year
12 possible.

13 (e) Any taxpayer who elects to be subject to this
14 section shall not be entitled to increase the basis of the
15 property as otherwise required by Section 164(a) of the
16 Internal Revenue Code with respect to the sales and use
17 tax paid or incurred in connection with the taxpayer's
18 purchase of qualified property.

19 (f) (1) The amount of credit otherwise allowed under
20 this section and Sections 23623.5 and 23625, including any
21 credit carryover from prior years, that may reduce the tax
22 for the income year shall not exceed the amount of tax
23 which would be imposed on the taxpayer's business
24 income attributable to the Los Angeles Revitalization
25 Zone (designated pursuant to Section 7102 of the
26 Government Code) determined as if that attributable
27 income represented all of the income of the taxpayer
28 subject to tax under this part.

29 (2) The amount of attributable income described in
30 paragraph (1) shall be that portion of the taxpayer's
31 California source business income which is apportioned
32 to the Los Angeles Revitalization Zone. For that purpose,
33 the taxpayer's business income attributable to sources in
34 this state first shall be determined in accordance with the
35 provisions of Chapter 17 (commencing with Section
36 25101). That business income shall be further
37 apportioned to the Los Angeles Revitalization Zone in
38 accordance with the provisions of Article 2 (commencing
39 with Section 25120) of Chapter 17, modified as follows:

1 (A) Business income shall be apportioned to the Los
2 Angeles Revitalization Zone by multiplying total
3 California business income of the taxpayer by a fraction,
4 the numerator of which is the property factor plus the
5 payroll factor, and the denominator of which is two.

6 (B) The property factor is a fraction, the numerator of
7 which is the average value of the taxpayer's real and
8 tangible personal property owned or rented and used in
9 the Los Angeles Revitalization Zone during the income
10 year and the denominator of which is the average value
11 of all the taxpayer's real and tangible personal property
12 owned or rented and used in this state during the income
13 year.

14 (C) The payroll factor is a fraction, the numerator of
15 which is the total amount paid by the taxpayer in the Los
16 Angeles Revitalization Zone during the income year for
17 compensation, and the denominator of which is the total
18 compensation paid by the taxpayer in this state during the
19 income year.

20 (3) The portion of the credit remaining, if any, after
21 application of this subdivision, shall be carried over to
22 succeeding income years, as if it were an amount
23 exceeding the tax for the income year, as provided in
24 subdivision (d).

25 (g) If the qualified property is disposed of or no longer
26 used by the taxpayer in the Los Angeles Revitalization
27 Zone, at any time before the close of the second income
28 year after the property is placed in service, the amount
29 of the credit previously claimed shall be added to the
30 taxpayer's tax liability in the income year of that
31 disposition or nonuse.

32 (h) This section shall be inoperative as of the first day
33 of the income year beginning on or after the
34 determination date, and each income year thereafter,
35 with respect to the taxpayer's business activities within a
36 geographic area that is excluded from the map pursuant
37 to Section 7102 of the Government Code, or an excluded
38 area determined pursuant to Section 7104 of the
39 Government Code. The determination date is the earlier
40 of the first effective date of a determination under

1 subdivision (c) of Section 7102 of the Government Code
2 occurring after December 1, 1994, or the first effective
3 date of an exclusion of an area from the amended Los
4 Angeles Revitalization Zone under Section 7104 of the
5 Government Code. However, if the taxpayer has any
6 unused credit amount as of the date this section becomes
7 inoperative, that unused credit amount may continue to
8 be carried forward as provided in subdivision (d).

9 (i) This section shall remain in effect only until
10 December 1, 1998, and as of that date is repealed.
11 However, any unused credit may continue to be carried
12 forward, as provided in subdivision (d).

13 SEC. 80. Section 23623.5 of the Revenue and Taxation
14 Code is amended to read:

15 23623.5. (a) For each income year beginning on or
16 after January 1, 1992, and before January 1, 1998, the
17 taxpayer shall be allowed for hiring qualified
18 disadvantaged individuals on or after May 1, 1992, a credit
19 against the "tax," as defined in Section 23036, for the
20 income year equal to the sum of each of the following:

21 (1) Fifty percent of qualified wages in the first year of
22 employment.

23 (2) Forty percent of qualified wages in the second year
24 of employment.

25 (3) Thirty percent of qualified wages in the third year
26 of employment.

27 (4) Twenty percent of qualified wages in the fourth
28 year of employment.

29 (5) Ten percent of qualified wages in the fifth year of
30 employment.

31 (b) For purposes of this section:

32 (1) "Qualified wages" means:

33 (A) That portion of wages paid or incurred by the
34 taxpayer during the income year to qualified
35 disadvantaged individuals that does not exceed 150
36 percent of the minimum wage.

37 (B) Wages received during the 60-month period
38 beginning with the day the disadvantaged individual
39 commences employment with the taxpayer.

1 (C) Qualified wages does not include any wages paid
2 or incurred by the taxpayer on or after the zone
3 expiration date.

4 (D) If, after a taxpayer hires a qualified disadvantaged
5 individual, the geographic area in which the taxpayer's
6 trade or business is located is excluded from the map of
7 the Los Angeles Revitalization Zone by the Trade and
8 Commerce Agency pursuant to Section 7102 or 7104 of
9 the Government Code, wages paid or incurred with
10 respect to the disadvantaged individual may continue to
11 be qualified wages and may qualify for the credit under
12 this section, provided all provisions of this section are
13 satisfied, applied as if the taxpayer's trade or business was
14 still located within the Los Angeles Revitalization Zone.

15 (2) "Minimum wage" means the wage established by
16 the Industrial Welfare Commission as provided for in
17 Chapter 1 (commencing with Section 1171) of Part 4 of
18 Division 2 of the Labor Code.

19 (3) "Qualified disadvantaged individual" means an
20 individual who is a qualified employee and a resident of
21 the Los Angeles Revitalization Zone.

22 (4) "Los Angeles Revitalization Zone" means the area
23 designated under Section 7102 of the Government Code.

24 (5) "Qualified employee" means an individual that
25 meets both of the following:

26 (A) At least 90 percent of whose services for the
27 taxpayer during the income year are directly related to
28 the conduct of the taxpayer's trade or business located in
29 the Los Angeles Revitalization Zone.

30 (B) Who performs at least 50 percent of his or her
31 services for the taxpayer during the income year in the
32 Los Angeles Revitalization Zone.

33 (6) "Resident" means a "resident" as defined in
34 Section 7101 of the Government Code.

35 (7) "Taxpayer" means a corporation engaged in a
36 trade or business within the Los Angeles Revitalization
37 Zone.

38 (8) "Zone expiration date" means the date the Los
39 Angeles Revitalization Zone designation expires, is

1 repealed, or becomes inoperative pursuant to Section
2 7102, 7103, or 7104 of the Government Code.

3 (9) (A) All employees of all corporations that are
4 members of the same controlled group of corporations
5 shall be treated as employed by a single taxpayer.

6 (B) The credit, if any, allowable by this section to each
7 member shall be determined by reference to its
8 proportionate share of the expense of the qualified wages
9 giving rise to the credit and allocated in that manner.

10 (C) “Controlled group of corporations” means
11 “controlled group of corporations” as defined in Section
12 1563(a) of the Internal Revenue Code, except that:

13 (i) “More than 50 percent” shall be substituted for “at
14 least 80 percent” each place it appears in Section
15 1563(a)(1) of the Internal Revenue Code.

16 (ii) The determination shall be made without regard
17 to Sections 1563(a)(4) and 1563(e)(3)(C) of the Internal
18 Revenue Code.

19 (10) If a taxpayer acquires the major portion of a trade
20 or business of another employer (hereafter in this
21 paragraph referred to as the “predecessor”) or the major
22 portion of a separate unit of a trade or business of a
23 predecessor, then, for the purposes of applying this
24 section (other than subdivision (c)) for any calendar year
25 ending after that acquisition, the employment
26 relationship between a disadvantaged individual and an
27 employer shall not be treated as terminated if the
28 individual continues to be employed in that trade or
29 business.

30 (c) (1) If the employment of any disadvantaged
31 individual, with respect to whom qualified wages are
32 taken into account under subdivision (a), is terminated
33 by the taxpayer at any time during the first 270 days of
34 that employment (whether or not consecutive) or before
35 the close of the 270th calendar day after the day in which
36 that individual completes 90 days of employment with
37 the taxpayer, the tax imposed by this part for the income
38 year in which that employment is terminated shall be
39 increased by an amount equal to the credit allowed under
40 subdivision (a) for that income year and all prior income

1 years attributable to qualified wages paid or incurred
2 with respect to that individual.

3 (2) (A) Paragraph (1) shall not apply to any of the
4 following:

5 (i) A termination of employment of a disadvantaged
6 individual who voluntarily leaves the employment of the
7 taxpayer.

8 (ii) A termination of employment of a disadvantaged
9 individual who, before the close of the period referred to
10 in paragraph (1), becomes disabled and unable to
11 perform the services of that employment, unless that
12 disability is removed before the close of that period and
13 the taxpayer fails to offer reemployment to that
14 individual.

15 (iii) A termination of employment of a disadvantaged
16 individual, if it is determined under the applicable
17 employment compensation provisions that the
18 termination was due to the misconduct of that individual.

19 (iv) A termination of employment of a disadvantaged
20 individual due to a substantial reduction in the trade or
21 business operations of the taxpayer.

22 (v) A termination of employment of a disadvantaged
23 individual, if that individual is replaced by other qualified
24 employees so as to create a net increase in both the
25 number of employees and the hours of employment.

26 (B) For purposes of paragraph (1), the employment
27 relationship between the taxpayer and a disadvantaged
28 individual shall not be treated as terminated by either of
29 the following:

30 (i) By a transaction to which Section 381(a) of the
31 Internal Revenue Code applies, if the individual
32 continues to be employed by the acquiring corporation.

33 (ii) By reason of a mere change in the form of
34 conducting the trade or business of the taxpayer, if the
35 individual continues to be employed in that trade or
36 business and the taxpayer retains a substantial interest in
37 that trade or business.

38 (3) Any increase in tax under paragraph (1) shall not
39 be treated as tax imposed by this part for purposes of

1 determining the amount of any credit allowable under
2 this part.

3 (d) In the case of an organization to which Section 593
4 of the Internal Revenue Code applies, and a regulated
5 investment company or a real estate investment trust
6 subject to taxation under this part, rules similar to the
7 rules provided in Sections 46(e) and 46(h) of the Internal
8 Revenue Code shall apply.

9 (e) The credit shall be reduced by the credits allowed
10 under Sections 23621, 23622, 23623, and 23625, claimed for
11 the same disadvantaged individual. The credit shall also
12 be reduced by the federal credit allowed under Section
13 51 of the Internal Revenue Code.

14 In addition, any deduction otherwise allowed under
15 this part for the wages or salaries paid or incurred by the
16 taxpayer upon which the credit is based shall be reduced
17 by the amount of the credit, prior to any reduction
18 required by subdivision (f) or (g).

19 (f) In the case where the credit otherwise allowed
20 under this section exceeds tax for the income year, that
21 portion of the credit that exceeds the tax may be carried
22 over and added to the credit, if any, in succeeding income
23 years while the designation of the Los Angeles
24 Revitalization Zone under Section 7102 of the
25 Government Code is operative or 15 income years, if
26 longer, until the credit is exhausted. The credit shall be
27 applied first to the earliest income years possible.

28 (g) (1) The amount of credit otherwise allowed
29 under this section and Sections 23612.6 and 23625,
30 including any credit carryover from prior years, that may
31 reduce the tax for the income year shall not exceed the
32 amount of tax that would be imposed on the taxpayer's
33 business income attributable to the Los Angeles
34 Revitalization Zone determined as if that attributable
35 income represented all of the income of the taxpayer
36 subject to tax under this part.

37 (2) The amount of attributable income described in
38 paragraph (1) shall be that portion of the taxpayer's
39 California source business income which is apportioned
40 to the Los Angeles Revitalization Zone. For that purpose,

1 the taxpayer's business income attributable to sources in
2 this state first shall be determined in accordance with the
3 provisions of Chapter 17 (commencing with Section
4 25101). That business income shall be further
5 apportioned to the Los Angeles Revitalization Zone in
6 accordance with the provisions of Article 2 (commencing
7 with Section 25120) of Chapter 17, modified as follows:

8 (A) Business income shall be apportioned to the Los
9 Angeles Revitalization Zone by multiplying total
10 California business income of the taxpayer by a fraction,
11 the numerator of which is the property factor plus the
12 payroll factor, and the denominator of which is two.

13 (B) The property factor is a fraction, the numerator of
14 which is the average value of the taxpayer's real and
15 tangible personal property owned or rented and used in
16 the Los Angeles Revitalization Zone during the income
17 year and the denominator of which is the average value
18 of all the taxpayer's real and tangible personal property
19 owned or rented and used in this state during the income
20 year.

21 (C) The payroll factor is a fraction, the numerator of
22 which is the total amount paid by the taxpayer in the Los
23 Angeles Revitalization Zone during the income year for
24 compensation, and the denominator of which is the total
25 compensation paid by the taxpayer in this state during the
26 income year.

27 (3) The portion of the credit remaining, if any, after
28 application of this subdivision, shall be carried over to
29 succeeding income years, as if it were an amount
30 exceeding the tax for the income year, as provided in
31 subdivision (f).

32 (h) Except as provided in subparagraph (D) of
33 paragraph (1) of subdivision (b), this section shall be
34 inoperative on the first day of the income year beginning
35 on or after the determination date, and each income year
36 thereafter, with respect to the taxpayer's business
37 activities within a geographic area that is excluded from
38 the map pursuant to Section 7102 of the Government
39 Code, or an excluded area determined pursuant to
40 Section 7104 of the Government Code. The

1 determination date is the earlier of the first effective date
2 of a determination under subdivision (c) of Section 7102
3 of the Government Code occurring after December 1,
4 1994, or the first effective date of an exclusion of an area
5 from the amended Los Angeles Revitalization Zone
6 under Section 7104 of the Government Code. However,
7 if the taxpayer has any unused credit amount as of the
8 date this section becomes inoperative, that unused credit
9 amount may continue to be carried forward as provided
10 in subdivision (f).

11 (i) This section shall remain in effect only until
12 December 1, 1998, and as of that date is repealed.
13 However, any unused credit may continue to be carried
14 forward, as specified in subdivision (f).

15 SEC. 81. Section 23625 of the Revenue and Taxation
16 Code is amended to read:

17 23625. (a) For each income year beginning on or
18 after January 1, 1992, and before January 1, 1998, there
19 shall be allowed to a taxpayer who employs qualified
20 employees in the Los Angeles Revitalization Zone during
21 the income year as a credit against the "tax," as defined
22 in Section 23036, an amount equal to the sum of the
23 following:

24 (1) One hundred percent of the qualified wages paid
25 or incurred during the period from May 1, 1992, to the end
26 of the sixth full month after the designation of the Los
27 Angeles Revitalization Zone with respect to qualified
28 employees that are hired during that period.

29 (2) Seventy-five percent of the qualified wages paid or
30 incurred during the period from the beginning of the
31 seventh month after designation to the end of the 12th full
32 month after designation with respect to qualified
33 employees that are hired during that period.

34 (3) Fifty percent of the qualified wages paid or
35 incurred during the period from the beginning of the
36 13th month after designation to the end of the 60th full
37 month after designation with respect to qualified
38 employees that are hired during that period.

39 (b) For purposes of this section:

1 (1) (A) “Qualified wages” means that portion of
2 wages paid or incurred by the taxpayer for construction
3 work in the Los Angeles Revitalization Zone during the
4 income year with respect to qualified employees which
5 does not exceed 150 percent of the minimum wage.

6 (B) If, after a taxpayer hires a qualified employee, the
7 geographic area in which the taxpayer’s trade or business
8 is located is excluded from the map of the Los Angeles
9 Revitalization Zone by the Trade and Commerce Agency
10 pursuant to Section 7102 or 7104 of the Government
11 Code, wages paid or incurred with respect to the qualified
12 employee may continue to be qualified wages and may
13 qualify for the credit under this section, provided all
14 provisions of this section are satisfied, applied as if the
15 taxpayer’s trade or business was still located within the
16 Los Angeles Revitalization Zone.

17 (2) “Minimum wage” means the wage established by
18 the Industrial Welfare Commission as provided for in
19 Chapter 1 (commencing with Section 1171) of Part 4 of
20 Division 2 of the Labor Code.

21 (3) “Qualified employee” means an individual to
22 whom both of the following apply:

23 (A) Is a resident, as defined in Section 7101 of the
24 Government Code, in the Los Angeles Revitalization
25 Zone.

26 (B) Was hired by the taxpayer to perform construction
27 work in the Los Angeles Revitalization Zone.

28 (4) “Los Angeles Revitalization Zone” means the area
29 designated pursuant to Section 7102 of the Government
30 Code.

31 (5) “Construction work” means any work performed
32 by a qualified employee directly related to the erection,
33 demolition, repair, or renovation of a structure located
34 within the Los Angeles Revitalization Zone.

35 (6) “Taxpayer” means a corporation engaged in a
36 trade or business within the Los Angeles Revitalization
37 Zone.

38 (c) If an employer acquires the major portion of a
39 trade or business of another employer (hereafter in this
40 subdivision referred to as the “predecessor”) or the major

1 portion of a separate unit of a trade or business of a
2 predecessor, then, for the purposes of applying this
3 section, other than subdivision (h), for any income year
4 ending after the acquisition, the employment
5 relationship between a qualified employee and employer
6 shall not be treated as terminated if the employee
7 continues to be employed in that trade or business.

8 (d) The credit shall be reduced by the credits
9 allowable under Sections 23621, 23622, 23623, and 23623.5
10 claimed for the same qualified employee. The credit shall
11 also be reduced by the credit allowed under Section 51 of
12 the Internal Revenue Code for the same qualified
13 employee.

14 (e) Any deduction otherwise allowed under this part
15 for the wages or salaries paid or incurred by the taxpayer
16 upon which the credit is based shall be reduced by the
17 amount of credit, prior to any reduction required by
18 subdivision (f) or (g).

19 (f) In the case where the credit otherwise allowed
20 under this section exceeds the tax for the income year,
21 that portion of the credit that exceeds the tax may be
22 carried over and added to the credit, if any, in succeeding
23 income years for the number of income years in which
24 the designation of the Los Angeles Revitalization Zone
25 under Section 7102 of the Government Code is operative,
26 or 15 income years, if longer, until the credit is exhausted.
27 The credit shall be applied first to the earliest income year
28 possible.

29 (g) (1) The amount of credit otherwise allowed
30 under this section and Sections 23612.6 and 23623.5,
31 including any credit carryover from prior years, that may
32 reduce the tax for the income year shall not exceed the
33 amount of tax that would be imposed on the taxpayer's
34 business income attributable to the Los Angeles
35 Revitalization Zone determined as if that attributable
36 income represented all of the income of the taxpayer
37 subject to tax under this part.

38 (2) The amount of attributable income described in
39 paragraph (1) shall be that portion of the taxpayer's
40 California source business income which is apportioned

1 to the Los Angeles Revitalization Zone. For that purpose,
2 the taxpayer's business income attributable to sources in
3 this state first shall be determined in accordance with the
4 provisions of Chapter 17 (commencing with Section
5 25101). That business income shall be further
6 apportioned to the Los Angeles Revitalization Zone in
7 accordance with the provisions of Article 2 (commencing
8 with Section 25120) of Chapter 17 of Part 11, modified as
9 follows:

10 (A) Business income shall be apportioned to the Los
11 Angeles Revitalization Zone by multiplying total
12 California business income of the taxpayer by a fraction,
13 the numerator of which is the property factor plus the
14 payroll factor, and the denominator of which is two.

15 (B) The property factor is a fraction, the numerator of
16 which is the average value of the taxpayer's real and
17 tangible personal property owned or rented and used in
18 the Los Angeles Revitalization Zone during the income
19 year and the denominator of which is the average value
20 of all the taxpayer's real and tangible personal property
21 owned or rented and used in this state during the income
22 year.

23 (C) The payroll factor is a fraction, the numerator of
24 which is the total amount paid by the taxpayer in the Los
25 Angeles Revitalization Zone during the income year for
26 compensation, and the denominator of which is the total
27 compensation paid by the taxpayer in this state during the
28 income year.

29 (3) The portion of the credit remaining, if any, after
30 application of this subdivision, shall be carried over to
31 succeeding income years, as if it were an amount
32 exceeding the tax for the income year, as provided in
33 subdivision (f).

34 (h) (1) If the employment of any qualified employee,
35 with respect to whom qualified wages are taken into
36 account under subdivision (a) is terminated by the
37 taxpayer at any time during the first 270 days of that
38 employment (whether or not consecutive) or before the
39 close of the 270th calendar day after the day in which that
40 employee completes 90 days of employment with the



1 taxpayer, the tax imposed by this part for the income year
2 in which that employment is terminated shall be
3 increased by an amount equal to the credit allowed under
4 subdivision (a) for that income year and all prior income
5 years attributable to qualified wages paid or incurred
6 with respect to that employee.

7 (2) (A) Paragraph (1) shall not apply to any of the
8 following:

9 (i) A termination of employment of a qualified
10 employee who voluntarily leaves the employment of the
11 taxpayer.

12 (ii) A termination of employment of a qualified
13 employee who, before the close of the period referred to
14 in paragraph (1), becomes disabled and unable to
15 perform the services of that employment, unless that
16 disability is removed before the close of that period and
17 the taxpayer fails to offer reemployment to that qualified
18 employee.

19 (iii) A termination of employment of a qualified
20 employee, if it is determined under the applicable
21 employment compensation provisions that the
22 termination was due to the misconduct of that qualified
23 employee.

24 (iv) A termination of employment of a qualified
25 employee due to a substantial reduction in the trade or
26 business operations of the taxpayer.

27 (v) A termination of employment of a qualified
28 employee, if that qualified employee is replaced by other
29 qualified employees so as to create a net increase in both
30 the number of employees and the hours of employment.

31 (vi) A termination of employment due to a
32 contractual agreement.

33 (B) For purposes of paragraph (1), the employment
34 relationship between the taxpayer and a qualified
35 employee shall not be treated as terminated by reason of
36 a mere change in the form of conducting the trade or
37 business of the taxpayer, if the qualified employee
38 continues to be employed in that trade or business and
39 the taxpayer retains a substantial interest in that trade or
40 business.

1 (i) Except as provided in subparagraph (B) of
2 paragraph (1) of subdivision (b), this section shall cease
3 to be operative on the first day of the income year
4 beginning on or after the determination date, and each
5 income year thereafter, with respect to the taxpayer's
6 business activities within a geographic area that is
7 excluded from the map pursuant to Section 7102 of the
8 Government Code, or an excluded area determined
9 pursuant to Section 7104 of the Government Code. For
10 purposes of this subdivision, "determination date" means
11 the earlier of the first effective date of a determination
12 under subdivision (c) of Section 7102 of the Government
13 Code occurring after December 1, 1994, or the first
14 effective date of an exclusion of an area from the
15 amended Los Angeles Revitalization Zone under Section
16 7104 of the Government Code. However, if the taxpayer
17 has any unused credit amount as of the date this section
18 becomes inoperative, that unused credit amount may
19 continue to be carried forward as provided in subdivision
20 (f).

21 (j) This section shall remain in effect only until
22 December 1, 1998, and as of that date is repealed.
23 However, any unused credit may continue to be carried
24 forward, as provided in subdivision (f).

25 SEC. 82. Section 23645 of the Revenue and Taxation
26 Code is amended to read:

27 23645. (a) For each income year beginning on or
28 after January 1, 1995, and before January 1, 2003, there
29 shall be allowed as a credit against the "tax" (as defined
30 by Section 23036) for the income year an amount equal
31 to the sales or use tax paid or incurred by the taxpayer in
32 connection with the purchase of qualified property to the
33 extent that the qualified property does not exceed a value
34 of twenty million dollars (\$20,000,000).

35 (b) For purposes of this section:

36 (1) "LAMBRA" means a local agency military base
37 recovery area designated in accordance with Section 7114
38 of the Government Code.

39 (2) "Taxpayer" means a corporation that conducts a
40 trade or business within a LAMBRA and, for the first two

1 income years, has a net increase in jobs (defined as 2,000
2 paid hours per employee per year) of one or more
3 employees in the LAMBRA.

4 (A) The net increase in the number of jobs shall be
5 determined by subtracting the total number of full-time
6 employees (defined as 2,000 paid hours per employee per
7 year) the taxpayer employed in this state in the income
8 year prior to commencing business operations in the
9 LAMBRA from the total number of full-time employees
10 the taxpayer employed in this state during the second
11 income year after commencing business operations in the
12 LAMBRA. For taxpayers who commence doing business
13 in this state with their LAMBRA business operation, the
14 number of employees for the income year prior to
15 commencing business operations in the LAMBRA shall
16 be zero. If the taxpayer has a net increase in jobs in the
17 state, the credit shall be allowed only if one or more
18 full-time employees is employed within the LAMBRA.

19 (B) The total number of employees employed in the
20 LAMBRA shall equal the sum of both of the following:

21 (i) The total number of hours worked in the LAMBRA
22 for the taxpayer by employees (not to exceed 2,000 hours
23 per employee) who are paid an hourly wage divided by
24 2,000.

25 (ii) The total number of months worked in the
26 LAMBRA for the taxpayer by employees that are salaried
27 employees divided by 12.

28 (C) In the case of a taxpayer who first commences
29 doing business in the LAMBRA during the income year,
30 for purposes of clauses (i) and (ii), respectively, of
31 subparagraph (B) the divisors “2,000” and “12” shall be
32 multiplied by a fraction, the numerator of which is the
33 number of months of the income year that the taxpayer
34 was doing business in the LAMBRA and the denominator
35 of which is 12.

36 (3) “Qualified property” means the purchase of any of
37 the following for exclusive use in a LAMBRA:

38 (A) High technology equipment, including, but not
39 limited to, computers and electronic processing
40 equipment.

1 (B) Aircraft maintenance equipment, including, but
2 not limited to, engine stands, hydraulic mules, power
3 carts, test equipment, handtools, aircraft start carts, and
4 tugs.

5 (C) Aircraft components, including, but not limited
6 to, engines, fuel control units, hydraulic pumps, avionics,
7 starts, wheels, and tires.

8 (D) Any property that is Section 1245 property, as
9 defined in Section 1245(a)(3) of the Internal Revenue
10 Code.

11 (c) The credit provided under subdivision (a) shall
12 only be allowed for qualified property manufactured in
13 California unless qualified property of a comparable
14 quality and price is not available for timely purchase and
15 delivery from a California manufacturer.

16 (d) In the case where the credit otherwise allowed
17 under this section exceeds the “tax” for the income year,
18 that portion of the credit which exceeds the “tax” may be
19 carried over and added to the credit, if any, in succeeding
20 years, until the credit is exhausted. The credit shall be
21 applied first to the earliest income years possible.

22 (e) Any taxpayer who elects to be subject to this
23 section shall not be entitled to increase the basis of the
24 property as otherwise required by Section 164(a) of the
25 Internal Revenue Code with respect to sales or use tax
26 paid or incurred in connection with the purchase of
27 qualified property.

28 (f) (1) The amount of the credit otherwise allowed
29 under this section and Section 23646, including any credit
30 carryovers from prior years, that may reduce the “tax” for
31 the income year shall not exceed the amount of tax that
32 would be imposed on the taxpayer’s business income
33 attributed to a LAMBRA determined as if that
34 attributable income represented all the income of the
35 taxpayer subject to tax under this part.

36 (2) The amount of attributable income described in
37 paragraph (1) shall be determined in accordance with
38 the provisions of Chapter 17 (commencing with Section
39 25101), modified for purposes of this section as follows:

1 (A) Income shall be apportioned to a LAMBRA by
2 multiplying total business income by a fraction, the
3 numerator of which is the property factor, plus the
4 payroll factor, and the denominator of which is two.

5 (B) “The LAMBRA” shall be substituted for “this
6 state.”

7 (3) The portion of any credit remaining, if any, after
8 application of this subdivision, shall be carried over to
9 succeeding income years, as if it were an amount
10 exceeding the “tax” for the income year, as provided in
11 subdivision (d).

12 (g) (1) If the qualified property is disposed of or no
13 longer used by the taxpayer in the LAMBRA, at any time
14 before the close of the second taxable year after the
15 property is placed in service, the amount of the credit
16 previously claimed, with respect to that property, shall be
17 added to the taxpayer’s tax liability in the taxable year of
18 that disposition or nonuse.

19 (2) At the close of the second income year, if the
20 taxpayer has not increased the number of its employees
21 as determined by paragraph (2) of subdivision (b), then
22 the amount of the credit previously claimed shall be
23 added to the taxpayer’s tax for the taxpayer’s second
24 income year.

25 (h) If the taxpayer is allowed a credit for qualified
26 property pursuant to this section, only one credit shall be
27 allowed to the taxpayer under this part with respect to
28 that qualified property.

29 (i) This section shall remain in effect only until
30 December 1, 2003, and as of that date is repealed.
31 However, any unused credit may continue to be carried
32 forward as provided in subdivision (d), until the credit is
33 exhausted.

34 SEC. 83. Section 23646 of the Revenue and Taxation
35 Code is amended to read:

36 23646. (a) For each income year beginning on or
37 after January 1, 1995, and before January 1, 2003, there
38 shall be allowed as a credit against the “tax” (as defined
39 in Section 23036) to a qualified taxpayer for hiring a
40 qualified disadvantaged individual or a qualified

1 displaced employee during the income year for
2 employment in the LAMBRA. The credit shall be equal
3 to the sum of each of the following:

4 (1) Fifty percent of the qualified wages in the first year
5 of employment.

6 (2) Forty percent of the qualified wages in the second
7 year of employment.

8 (3) Thirty percent of the qualified wages in the third
9 year of employment.

10 (4) Twenty percent of the qualified wages in the
11 fourth year of employment.

12 (5) Ten percent of the qualified wages in the fifth year
13 of employment.

14 (b) For purposes of this section:

15 (1) “Qualified wages” means:

16 (A) That portion of wages paid or incurred by the
17 employer during the income year to qualified
18 disadvantaged individuals or qualified displaced
19 employees that does not exceed 150 percent of the
20 minimum wage.

21 (B) The total amount of qualified wages which may be
22 taken into account for purposes of claiming the credit
23 allowed under this section shall not exceed two million
24 dollars (\$2,000,000) per income year.

25 (C) Wages received during the 60-month period
26 beginning with the day the individual commences
27 employment with the taxpayer.

28 (2) “Minimum wage” means the wage established by
29 the Industrial Welfare Commission as provided for in
30 Chapter 1 (commencing with Section 1171) of Part 4 of
31 Division 2 of the Labor Code.

32 (3) “LAMBRA” means a local agency military base
33 recovery area designated in accordance with the
34 provisions of Section 7114 of the Government Code.

35 (4) “Qualified disadvantaged individual” means an
36 individual who satisfies all of the following requirements:

37 (A) (i) At least 90 percent of whose services for the
38 taxpayer during the income year are directly related to
39 the conduct of the taxpayer’s trade or business located in
40 a LAMBRA.

1 (ii) Who performs at least 50 percent of his or her
2 services for the taxpayer during the income year in the
3 LAMBRA.

4 (B) Who is hired by the employer after the
5 designation of the area as a LAMBRA in which the
6 individual's services were primarily performed.

7 (C) Who is any of the following immediately
8 preceding the individual's commencement of
9 employment with the taxpayer:

10 (i) An individual who has been determined eligible for
11 services under the federal Job Training Partnership Act
12 (29 U.S.C. Sec. 1501 et seq.).

13 (ii) Any voluntary or mandatory registrant under the
14 Greater Avenues for Independence Act of 1985 provided
15 for pursuant to Article 3.2 (commencing with Section
16 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare
17 and Institutions Code.

18 (iii) Any individual who has been certified eligible by
19 the Employment Development Department under the
20 federal Targeted Jobs Tax Credit Program whether or not
21 this program is in effect.

22 (5) "Qualified taxpayer" means a corporation that
23 conducts a trade or business within a LAMBRA and, for
24 the first two income years, has a net increase in jobs
25 (defined as 2,000 paid hours per employee per year) of
26 one or more employees as determined below in the
27 LAMBRA.

28 (A) The net increase in the number of jobs shall be
29 determined by subtracting the total number of full-time
30 employees (defined as 2,000 paid hours per employee per
31 year) the taxpayer employed in this state in the income
32 year prior to commencing business operations in the
33 LAMBRA from the total number of full-time employees
34 the taxpayer employed in this state during the second
35 income year after commencing business operations in the
36 LAMBRA. For taxpayers who commence doing business
37 in this state with their LAMBRA business operation, the
38 number of employees for the income year prior to
39 commencing business operations in the LAMBRA shall
40 be zero. If the taxpayer has a net increase in jobs in the

1 state, the credit shall be allowed only if one or more
2 full-time employees is employed within the LAMBRA.

3 (B) The total number of employees employed in the
4 LAMBRA shall equal the sum of both of the following:

5 (i) The total number of hours worked in the LAMBRA
6 for the taxpayer by employees (not to exceed 2,000 hours
7 per employee) who are paid an hourly wage divided by
8 2,000.

9 (ii) The total number of months worked in the
10 LAMBRA for the taxpayer by employees who are salaried
11 employees divided by 12.

12 (C) In the case of a qualified taxpayer that first
13 commences doing business in the LAMBRA during the
14 income year, for purposes of clauses (i) and (ii),
15 respectively, of subparagraph (B) the divisors “2,000”
16 and “12” shall be multiplied by a fraction, the numerator
17 of which is the number of months of the income year that
18 the taxpayer was doing business in the LAMBRA and the
19 denominator of which is 12.

20 (6) “Qualified displaced employee” means an
21 individual who satisfies all of the following requirements:

22 (A) Any civilian or military employee of a base or
23 former base that has been displaced as a result of a federal
24 base closure act.

25 (B) (i) At least 90 percent of whose services for the
26 taxpayer during the income year are directly related to
27 the conduct of the taxpayer’s trade or business located in
28 a LAMBRA.

29 (ii) Who performs at least 50 percent of his or her
30 services for the taxpayer during the income year in a
31 LAMBRA.

32 (C) Who is hired by the employer after the
33 designation of the area in which services were performed
34 as a LAMBRA.

35 (c) (1) For purposes of this section, both of the
36 following apply:

37 (A) All employees of all corporations that are
38 members of the same controlled group of corporations
39 shall be treated as employed by a single employer.

1 (B) The credit (if any) allowable by this section to
2 each member shall be determined by reference to its
3 proportionate share of the qualified wages giving rise to
4 the credit.

5 (2) For purposes of this subdivision, “controlled group
6 of corporations” has the meaning given to that term by
7 Section 1563(a) of the Internal Revenue Code, except
8 that both of the following apply:

9 (A) “More than 50 percent” shall be substituted for “at
10 least 80 percent” each place it appears in Section
11 1563(a)(1) of the Internal Revenue Code.

12 (B) The determination shall be made without regard
13 to Section 1563(a)(4) and Section 1563(e)(3)(C) of the
14 Internal Revenue Code.

15 (3) If an employer acquires the major portion of a
16 trade or business of another employer (hereinafter in this
17 paragraph referred to as the “predecessor”) or the major
18 portion of a separate unit of a trade or business of a
19 predecessor, then, for purposes of applying this section
20 (other than subdivision (d)) for any calendar year ending
21 after that acquisition, the employment relationship
22 between an employee and an employer shall not be
23 treated as terminated if the employee continues to be
24 employed in that trade or business.

25 (d) (1) If the employment of any employee with
26 respect to whom qualified wages are taken into account
27 under subdivision (a) is terminated by the taxpayer at
28 any time during the first 270 days of that employment
29 (whether or not consecutive) or before the close of the
30 270th calendar day after the day in which that employee
31 completes 90 days of employment with the taxpayer, the
32 tax imposed by this part for the income year in which that
33 employment is terminated shall be increased by an
34 amount equal to the credit allowed under subdivision (a)
35 for that income year and all prior income years
36 attributable to qualified wages paid or incurred with
37 respect to that employee.

38 (2) (A) Paragraph (1) shall not apply to any of the
39 following:

1 (i) A termination of employment of an employee who
2 voluntarily leaves the employment of the taxpayer.

3 (ii) A termination of employment of an individual
4 who, before the close of the period referred to in
5 paragraph (1), becomes disabled to perform the services
6 of that employment, unless that disability is removed
7 before the close of that period and the taxpayer fails to
8 offer reemployment to that individual.

9 (iii) A termination of employment of an individual, if
10 it is determined under the applicable unemployment
11 compensation laws that the termination was due to the
12 misconduct of that individual.

13 (iv) A termination of employment of an individual due
14 to a substantial reduction in the trade or business
15 operations of the taxpayer.

16 (v) A termination of employment of an individual, if
17 that individual is replaced by other qualified employees
18 so as to create a net increase in both the number of
19 employees and the hours of employment.

20 (B) For purposes of paragraph (1), the employment
21 relationship between the taxpayer and an employee shall
22 not be treated as terminated by either of the following:

23 (i) A transaction to which Section 381(a) of the
24 Internal Revenue Code applies, if the employee
25 continues to be employed by the acquiring corporation.

26 (ii) A mere change in the form of conducting the trade
27 or business of the taxpayer, if the employee continues to
28 be employed in that trade or business and the taxpayer
29 retains a substantial interest in that trade or business.

30 (3) Any increase in tax under paragraph (1) shall not
31 be treated as tax imposed by this part for purposes of
32 determining the amount of any credit allowable under
33 this part.

34 (4) At the close of the second income year, if the
35 taxpayer has not increased the number of its employees
36 as determined by paragraph (5) of subdivision (b), then
37 the amount of the credit previously claimed shall be
38 added to the taxpayer's tax for the taxpayer's second
39 income year.

(e) In the case of an organization to which Section 593 of the Internal Revenue Code applies, and a regulated investment company or a real estate investment trust subject to taxation under this part, rules similar to the rules provided in Section 46(e) and Section 46(h) of the Internal Revenue Code shall apply.

(f) The credit shall be reduced by the credit allowed under Section 23621. The credit shall also be reduced by the federal credit allowed under Section 51 of the Internal Revenue Code.

In addition, any deduction otherwise allowed under this part for the wages or salaries paid or incurred by the taxpayer upon which the credit is based shall be reduced by the amount of the credit, prior to any reduction required by subdivision (g) or (h).

(g) In the case where the credit otherwise allowed under this section exceeds the “tax” for the income year, that portion of the credit that exceeds the “tax” may be carried over and added to the credit, if any, in succeeding years, until the credit is exhausted. The credit shall be applied first to the earliest income years possible.

(h) (1) The amount of credit otherwise allowed under this section and Section 23645, including any prior year carryovers, that may reduce the “tax” for the income year shall not exceed the amount of tax that would be imposed on the taxpayer’s business income attributed to a LAMBRA determined as if that attributed income represented all of the income of the taxpayer subject to tax under this part.

(2) The amount of attributed income described in paragraph (1) shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101), modified for purposes of this section as follows:

(A) Income shall be apportioned to a LAMBRA by multiplying total business income by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(B) “The LAMBRA” shall be substituted for “this state.”

1 (3) The portion of any credit remaining, if any, after
2 application of this subdivision, shall be carried over to
3 succeeding income years, as if it were an amount
4 exceeding the “tax” for the income year, as provided in
5 subdivision (g).

6 (i) If the taxpayer is allowed a credit pursuant to this
7 section for qualified wages paid or incurred, only one
8 credit shall be allowed to the taxpayer under this part
9 with respect to any wage consisting in whole or in part of
10 those qualified wages.

11 (j) This section shall remain in effect only until
12 December 1, 2003, and as of that date is repealed.
13 However, any unused credit may continue to be carried
14 over as provided in subdivision (g), until the credit is
15 exhausted.

16 SEC. 84. Section 23649 of the Revenue and Taxation
17 Code is amended to read:

18 23649. (a) (1) A qualified taxpayer shall be allowed
19 a credit against the “tax,” as defined in Section 23036,
20 equal to 6 percent of the qualified cost of qualified
21 property that is placed in service in this state.

22 (2) In the case of any qualified costs paid or incurred
23 on or after January 1, 1994, and prior to the first income
24 year of the qualified taxpayer beginning on or after
25 January 1, 1995, the credit provided under paragraph (1)
26 shall be claimed by the qualified taxpayer on the qualified
27 taxpayer’s return for the first income year beginning on
28 or after January 1, 1995. No credit shall be claimed under
29 this section on a return filed for any income year
30 commencing prior to the qualified taxpayer’s first income
31 year beginning on or after January 1, 1995.

32 (b) (1) For purposes of this section, “qualified cost”
33 means any cost that satisfies each of the following
34 conditions:

35 (A) Except as otherwise provided in this
36 subparagraph, is a cost paid or incurred by the qualified
37 taxpayer for the construction, reconstruction, or
38 acquisition of qualified property on or after January 1,
39 1994, and prior to the date this section ceases to be
40 operative under paragraph (2) of subdivision (i). In the

1 case of any qualified property constructed,
2 reconstructed, or acquired by the qualified taxpayer (or
3 any person related to the qualified taxpayer within the
4 meaning of Section 267 or 707 of the Internal Revenue
5 Code) pursuant to a binding contract in existence on or
6 prior to January 1, 1994, costs paid pursuant to that
7 contract shall be subject to allocation as follows: contract
8 costs shall be allocated to qualified property based on a
9 ratio of costs actually paid prior to January 1, 1994, and
10 total contract costs actually paid. "Cost paid" shall
11 include, without limitation, contractual deposits and
12 option payments. To the extent of cost allocated, whether
13 or not currently deductible or depreciable for tax
14 purposes, to a period prior to January 1, 1994, the cost shall
15 be deemed allocated to property acquired before January
16 1, 1994, and is thus not a "qualified cost."

17 (B) Except as provided in paragraph (2) of subdivision
18 (d) and subparagraph (B) of paragraph (3) of subdivision
19 (d), is an amount upon which the qualified taxpayer has
20 paid, directly or indirectly as a separately stated contract
21 amount or as determined from the records of the
22 qualified taxpayer, sales or use tax under Part 1
23 (commencing with Section 6001).

24 (C) Is an amount properly chargeable to the capital
25 account of the qualified taxpayer.

26 (2) (A) For purposes of this subdivision, any contract
27 entered into on or after January 1, 1994, that is a successor
28 or replacement contract to a contract that was binding
29 prior to January 1, 1994, shall be treated as a binding
30 contract in existence prior to January 1, 1994.

31 (B) If a successor or replacement contract is entered
32 into on or after January 1, 1994, and the subject of the
33 successor or replacement contract relates both to
34 amounts for the construction, reconstruction, or
35 acquisition of qualified property described in the original
36 binding contract and to costs for the construction,
37 reconstruction, or acquisition of qualified property not
38 described in the original binding contract, then the
39 portion of those amounts described in the successor or
40 replacement contract that were not described in the

1 original binding contract shall not be treated as costs paid
2 or incurred pursuant to a binding contract in existence on
3 or prior to January 1, 1994, under subparagraph (A) of
4 paragraph (1).

5 (3) (A) For purposes of this section, an option
6 contract in existence prior to January 1, 1994, under which
7 a qualified taxpayer (or any other person related to the
8 qualified taxpayer within the meaning of Section 267 or
9 707 of the Internal Revenue Code) had an option to
10 acquire qualified property, shall be treated as a binding
11 contract under the rules in paragraph (2). For purposes
12 of this subparagraph, an option contract shall not include
13 an option under which the option holder will forfeit an
14 amount less than 10 percent of the fixed option price in
15 the event the option is not exercised.

16 (B) For purposes of this section, a contract shall be
17 treated as binding even if the contract is subject to a
18 condition.

19 (c) (1) For purposes of this section, “qualified
20 taxpayer” means any taxpayer engaged in those lines of
21 business described in Codes 2011 to 3999, inclusive, of the
22 Standard Industrial Classification (SIC) Manual
23 published by the United States Office of Management
24 and Budget, 1987 edition.

25 (2) In the case of any pass-through entity, the
26 determination of whether a taxpayer is a qualified
27 taxpayer shall be made at the entity level and any credit
28 under this section or Section 17053.49 shall be allowed to
29 the pass-through entity and passed through to the
30 partners or shareholders in accordance with applicable
31 provisions of Part 10 (commencing with Section 17001) or
32 Part 11 (commencing with Section 23001). For purposes
33 of this paragraph, the term “pass-through entity” means
34 any partnership or S corporation.

35 (3) The Franchise Tax Board may prescribe
36 regulations to carry out the purposes of this section,
37 including any regulations necessary to prevent the
38 avoidance of the effect of this section through splitups,
39 shell corporations, partnerships, tiered ownership
40 structures, sale-leaseback transactions, or otherwise.

1 (d) For purposes of this section, “qualified property”
2 means property that is described as either of the
3 following:

4 (1) Tangible personal property that is defined in
5 Section 1245(a) of the Internal Revenue Code for use by
6 a qualified taxpayer in those lines of business described in
7 Codes 2011 to 3999, inclusive, of the Standard Industrial
8 Classification (SIC) Manual published by the United
9 States Office of Management and Budget, 1987 edition,
10 that is primarily used for any of the following:

11 (A) For the manufacturing, processing, refining,
12 fabricating, or recycling of property, beginning at the
13 point at which any raw materials are received by the
14 qualified taxpayer and introduced into the process and
15 ending at the point at which the manufacturing,
16 processing, refining, fabricating, or recycling has altered
17 tangible personal property to its completed form,
18 including packaging, if required.

19 (B) In research and development.

20 (C) To maintain, repair, measure, or test any property
21 described in this paragraph.

22 (D) For pollution control that meets or exceeds
23 standards established by the state or by any local or
24 regional governmental agency within the state.

25 (E) For recycling.

26 (2) The value of any capitalized labor costs that are
27 directly allocable to the construction or modification of
28 property described in paragraph (1).

29 (3) In the case of any qualified taxpayer engaged in
30 manufacturing activities described in SIC Code 357 or
31 367, those activities related to biotechnology described in
32 SIC Code 8731, those activities related to
33 biopharmaceutical establishments only that are
34 described in SIC Codes 2833 to 2836, inclusive, those
35 activities related to space vehicles and parts described in
36 SIC Codes 3761 to 3769, inclusive, those activities related
37 to space satellites and communications satellites and
38 equipment described in SIC Codes 3663 and 3812 (but
39 only with respect to “qualified property” that is placed in
40 service on or after January 1, 1996), or those activities

1 related to semiconductor equipment manufacturing
2 described in SIC Code 3559 (but only with respect to
3 “qualified property” that is placed in service on or after
4 January 1, 1997), “qualified property” also includes the
5 following:

6 (A) Special purpose buildings and foundations that are
7 constructed or modified for use by the qualified taxpayer
8 primarily in a manufacturing, processing, refining, or
9 fabricating process, or as a research or storage facility
10 primarily used in connection with a manufacturing
11 process.

12 (B) The value of any capitalized labor costs that are
13 directly allocable to the construction or modification of
14 special purpose buildings and foundations that are used
15 primarily in the manufacturing, processing, refining, or
16 fabricating process, or as a research or storage facility
17 primarily used in connection with a manufacturing
18 process.

19 (C) (i) For purposes of this paragraph, “special
20 purpose building and foundation” means only a building
21 and the foundation immediately underlying the building
22 that is specifically designed and constructed or
23 reconstructed for the installation, operation, and use of
24 specific machinery and equipment with a special
25 purpose, which machinery and equipment, after
26 installation, will become affixed to or a fixture of the real
27 property, and the construction or reconstruction of which
28 is specifically designed and used exclusively for the
29 specified purposes as set forth in subparagraph (A)
30 (“qualified purpose”).

31 (ii) A building is specifically designed and constructed
32 or modified for a qualified purpose if it is not economic to
33 design and construct the building for the intended
34 purpose and then use the structure for a different
35 purpose.

36 (iii) For purposes of clause (i) and clause (vi), a
37 building is used exclusively for a qualified purpose only if
38 its use does not include a use for which it was not
39 specifically designed and constructed or modified.
40 Incidental use of a building for nonqualified purposes

1 does not preclude the building from being a special
2 purpose building. “Incidental use” means a use which is
3 both related and subordinate to the qualified purpose. It
4 will be conclusively presumed that a use is not
5 subordinate if more than one-third of the total usable
6 volume of the building is devoted to a use which is not a
7 qualified purpose.

8 (iv) In the event an entire building does not qualify as
9 a special purpose building, a taxpayer may establish that
10 a portion of a building, and the foundation immediately
11 underlying the portion, qualifies for treatment as a special
12 purpose building and foundation if the portion satisfies all
13 of the definitional provisions in this subparagraph.

14 (v) To the extent that a building is not a special
15 purpose building as defined above, but a portion of the
16 building qualifies for treatment as a special purpose
17 building, then all equipment which exclusively supports
18 the qualified purpose occurring within that portion and
19 which would qualify as Internal Revenue Code Section
20 1245 property if it were not a fixture or affixed to the
21 building shall be treated as a cost of the portion of the
22 building which qualifies for treatment as a special
23 purpose building.

24 (vi) Buildings and foundations which do not meet the
25 definition of a special purpose building and foundation set
26 forth above include, but are not limited to: buildings
27 designed and constructed or reconstructed principally to
28 function as a general purpose manufacturing, industrial,
29 or commercial building; research facilities that are used
30 primarily prior to or after, or prior to and after, the
31 manufacturing process; or storage facilities that are used
32 primarily prior to or after, or prior to and after,
33 completion of the manufacturing process. A research
34 facility shall not be considered to be used primarily prior
35 to or after, or prior to and after, the manufacturing
36 process if its purpose and use relate exclusively to the
37 development and regulatory approval of the
38 manufacturing process for specific biopharmaceutical
39 products. A research facility which is used primarily in
40 connection with the discovery of an organism from which

1 a biopharmaceutical product or process is developed does
2 not meet the requirements of the preceding sentence.

3 (4) Subject to the provisions in subparagraph (B) of
4 paragraph (1) of subdivision (b), qualified property also
5 includes computer software that is primarily used for
6 those purposes set forth in paragraph (1) of this
7 subdivision.

8 (5) Qualified property does not include any of the
9 following:

10 (A) Furniture.

11 (B) Facilities used for warehousing purposes after
12 completion of the manufacturing process.

13 (C) Inventory.

14 (D) Equipment used in the extraction process.

15 (E) Equipment used to store finished products that
16 have completed the manufacturing process.

17 (F) Any tangible personal property that is used in
18 administration, general management, or marketing.

19 (G) Any vehicle for which a credit is claimed pursuant
20 to Section 17052.11 or 23603.

21 (e) For purposes of this section:

22 (1) “Biopharmaceutical activities” means those
23 activities which use organisms or materials derived from
24 organisms, and their cellular, subcellular, or molecular
25 components, in order to provide pharmaceutical
26 products for human or animal therapeutics and
27 diagnostics. Biopharmaceutical activities make use of
28 living organisms to make commercial products, as
29 opposed to pharmaceutical activities which make use of
30 chemical compounds to produce commercial products.

31 (2) “Fabricating” means to make, build, create,
32 produce, or assemble components or property to work in
33 a new or different manner.

34 (3) “Manufacturing” means the activity of converting
35 or conditioning property by changing the form,
36 composition, quality, or character of the property for
37 ultimate sale at retail or use in the manufacturing of a
38 product to be ultimately sold at retail. Manufacturing
39 includes any improvements to tangible personal property



1 that result in a greater service life or greater functionality
2 than that of the original property.

3 (4) “Other biotechnology activities” means activities
4 consisting of the application of recombinant DNA
5 technology to produce commercial products, as well as
6 activities regarding pharmaceutical deliver systems
7 designed to provide a measure of control over the rate,
8 duration, and site of pharmaceutical delivery.

9 (5) “Primarily” means tangible personal property
10 used 50 percent or more of the time in an activity
11 described in subdivision (d).

12 (6) “Process” means the period beginning at the point
13 at which any raw materials are received by the qualified
14 taxpayer and introduced into the manufacturing,
15 processing, refining, fabricating, or recycling activity of
16 the qualified person and ending at the point at which the
17 manufacturing, processing, refining, fabricating, or
18 recycling activity of the qualified taxpayer has altered
19 tangible personal property to its completed form,
20 including packaging, if required. Raw materials shall be
21 considered to have been introduced into the process
22 when the raw materials are stored on the same premises
23 where the qualified taxpayer’s manufacturing,
24 processing, refining, fabricating, or recycling activity is
25 conducted. Raw materials that are stored on premises
26 other than where the qualified taxpayer’s manufacturing,
27 processing, refining, fabricating, or recycling activity is
28 conducted, shall not be considered to have been
29 introduced into the manufacturing, processing, refining,
30 fabricating, or recycling process.

31 (7) “Processing” means the physical application of the
32 materials and labor necessary to modify or change the
33 characteristics of property.

34 (8) “Refining” means the process of converting a
35 natural resource to an intermediate or finished product.

36 (9) “Research and development” means those
37 activities that are described in Section 174 of the Internal
38 Revenue Code or in any regulations thereunder.

1 (10) “Small business” means a qualified taxpayer that
2 meets any of the following requirements during the
3 income year for which the credit is allowed:

4 (A) Has gross receipts of less than fifty million dollars
5 (\$50,000,000).

6 (B) Has net assets of less than fifty million dollars
7 (\$50,000,000).

8 (C) Has a total credit of less than one million dollars
9 (\$1,000,000).

10 (D) For income years beginning on or after January 1,
11 1997, is engaged in biopharmaceutical activities or other
12 biotechnology activities that are described in Codes 2833
13 to 2836, inclusive, of the Standard Industrial Classification
14 (SIC) Manual published by the United States Office of
15 Management and Budget, 1987 edition, and has not
16 received regulatory approval for any product from the
17 United States Food and Drug Administration.

18 (f) The credit allowed under subdivision (a) shall
19 apply to qualified property that is acquired by or subject
20 to lease by a qualified taxpayer, subject to the following
21 special rules:

22 (1) A lessor of qualified property, irrespective of
23 whether the lessor is a qualified taxpayer, shall not be
24 allowed the credit provided under subdivision (a) with
25 respect to any qualified property leased to another
26 qualified taxpayer.

27 (2) For purposes of paragraphs (2) and (3) of
28 subdivision (b), “binding contract” shall include any
29 lease agreement with respect to the qualified property.

30 (3) (A) For purposes of determining the qualified
31 cost paid or incurred by a lessee in any leasing transaction
32 that is not treated as a sale under Part 1 (commencing
33 with Section 6001), the following rules shall apply:

34 (i) Except as provided by subparagraph (C) of this
35 paragraph, subparagraphs (A) and (C) of paragraph (1)
36 of subdivision (b) shall not apply.

37 (ii) Except as provided in subparagraph (B) and
38 clause (iii), the “qualified cost” upon which the lessee
39 shall compute the credit provided under this section shall
40 be equal to the original cost to the lessor (within the

1 meaning of Section 24912) of the qualified property that
2 is the subject of the lease.

3 (iii) Except as provided in clause (iv), the
4 requirement of subparagraph (B) of paragraph (1) of
5 subdivision (b) shall be treated as satisfied only if the
6 lessor has made a timely election under either Section
7 6094.1 or subdivision (d) of Section 6244 and has paid sales
8 tax reimbursement or use tax measured by the purchase
9 price of the qualified property (within the meaning of
10 paragraph (5) of subdivision (g) of Section 6006). For
11 purposes of this subdivision and clause (iv), the amount
12 of original cost to the lessor which may be taken into
13 account under clause (ii) shall not exceed the purchase
14 price upon which sales tax reimbursement or use tax has
15 been paid under the preceding sentence or under clause
16 (iv).

17 (iv) With respect to leases entered into between
18 January 1, 1994, and the effective date of this clause, the
19 lessor may elect to pay use tax measured by the purchase
20 price of the property by reporting and paying the tax with
21 the return of the lessor for the fourth calendar quarter of
22 1994. In computing the use tax under the preceding
23 sentence, a credit shall be allowed under Part 1
24 (commencing with Section 6001) for all sales or use tax
25 previously paid on the lease.

26 (B) For purposes of applying subparagraph (A) only,
27 the following special rules shall apply:

28 (i) The original cost to the lessor of the qualified
29 property shall be reduced by the amount of any original
30 cost of that property that was taken into account by any
31 predecessor lessee in computing the credit allowable
32 under this section.

33 (ii) Clause (i) shall not apply in any case where the
34 predecessor lessee was required to recapture the credit
35 provided under this section pursuant to the provisions of
36 subdivision (g).

37 (iii) For purposes of this section only, in any case
38 where a successor lessor has acquired qualified property
39 from a predecessor lessor in a transaction not treated as
40 a sale under Part 1 (commencing with Section 6001), the

1 original cost to the successor lessor of the qualified
2 property shall be reduced by the amount of the original
3 cost of the qualified property that was taken into account
4 by any lessee of the predecessor lessor in computing the
5 credit allowable under this section.

6 (C) In determining the original cost of any qualified
7 property under this paragraph, only amounts paid or
8 incurred by the lessor on or after January 1, 1994, and
9 prior to the date this section ceases to be operative under
10 paragraph (2) of subdivision (i), shall be taken into
11 account. In the case of any qualified property
12 constructed, reconstructed, or acquired by a lessor
13 pursuant to a binding contract in existence on or prior to
14 January 1, 1994, the allocation rule specified in
15 subparagraph (A) of paragraph (1) of subdivision (b)
16 shall apply in determining the original cost to the lessor
17 of qualified property.

18 (D) Notwithstanding subparagraph (A), in the case of
19 any leasing transaction for which the lessee is allowed the
20 credit under this section and thereafter the lessee (or any
21 party related to the lessee within the meaning of Section
22 267 or 318 of the Internal Revenue Code) acquires the
23 qualified property from the lessor (or any successor
24 lessor) within one year from the date the qualified
25 property is first used by the lessee under the terms of the
26 lease, the lessee's (or related party's) acquisition of the
27 qualified property from the lessor (or successor lessor)
28 shall be treated as a disposition by the lessee of the
29 qualified property that was subject to the lease under
30 subdivision (g).

31 (4) For purposes of determining the qualified cost
32 paid or incurred by a lessee in any leasing transaction that
33 is treated as a sale under Part 1 (commencing with
34 Section 6001), the following rules shall apply:

35 (A) Subparagraph (A) of paragraph (1) of subdivision
36 (b) shall be applied by substituting the term "purchase"
37 for the term "construction, reconstruction, or
38 acquisition."

39 (B) Subparagraph (C) of paragraph (1) of subdivision
40 (b) shall apply.

1 (C) The requirement of subparagraph (B) of
2 paragraph (1) of subdivision (b) shall be treated as
3 satisfied at the time that either the lessor or the qualified
4 taxpayer pays sales or use tax under Part 1 (commencing
5 with Section 6001).

6 (5) (A) In the case of any leasing transaction
7 described in paragraph (3), the lessor shall provide a
8 statement to the lessee specifying the amount of the
9 lessor's original cost of the qualified property and the
10 amount of that cost upon which a sales or use tax was paid
11 within 45 days after the close of the lessee's taxable year
12 in which the credit is allowable to the lessee under this
13 section.

14 (B) The statement required under subparagraph (A)
15 shall be made available to the Franchise Tax Board upon
16 request.

17 (g) No credit shall be allowed if the qualified property
18 is removed from the state, is disposed of to an unrelated
19 party, or is used for any purpose not qualifying for the
20 credit provided in this section in the same taxable year in
21 which the qualified property is first placed in service in
22 this state. If any qualified property for which a credit is
23 allowed pursuant to this section is thereafter removed
24 from this state, disposed of to an unrelated party, or used
25 for any purpose not qualifying for the credit provided in
26 this section within one year from the date the qualified
27 property is first placed in service in this state, the amount
28 of the credit allowed by this section for that qualified
29 property shall be recaptured by adding that credit
30 amount to the net tax of the qualified taxpayer for the
31 taxable year in which the qualified property is disposed
32 of, removed, or put to an ineligible use.

33 (h) In the case where the credit allowed by this section
34 exceeds the "tax," the excess may be carried over to
35 reduce the "tax" in the following year, and succeeding
36 years as follows:

37 (1) Except as provided in paragraph (2), for the seven
38 succeeding years if necessary, until the credit is
39 exhausted.

1 (2) In the case of a small business, for the nine
2 succeeding years, if necessary, until the credit is
3 exhausted.

4 (i) (1) This section shall remain in effect until the
5 date specified in paragraph (2) on which date this section
6 shall cease to be operative, and as of that date is repealed.
7 However, any unused credit may continue to be carried
8 forward, as provided in subdivision (h), until the credit
9 is exhausted.

10 (2) (A) This section shall cease to be operative on
11 January 1, 2001, or on January 1 of the earliest year
12 thereafter, if the total employment in this state, as
13 determined by the Employment Development
14 Department on the preceding January 1, does not exceed
15 by 100,000 jobs the total employment in this state on
16 January 1, 1994. The department shall report to the
17 Legislature annually with respect to the determination
18 required by the preceding sentence.

19 (B) For purposes of this paragraph, “total
20 employment” means the total employment in the
21 manufacturing sector, excluding employment in the
22 aerospace sector.

23 (j) The amendments made by the act adding this
24 subdivision shall be operative for income years beginning
25 on or after January 1, 1997, except as provided in
26 paragraph (3) of subdivision (d).

27 SEC. 85. Section 23731 of the Revenue and Taxation
28 Code is amended to read:

29 23731. Every organization or trust exempt under this
30 chapter, except as provided in this article, is subject to the
31 tax imposed upon its unrelated business taxable income
32 as defined in Section 23732.

33 (a) Corporations (other than banks and financial
34 corporations), associations, and business trusts are subject
35 to the tax rates imposed under Section 23151 or Section
36 23501.

37 (b) Trusts will be subject to the tax rates imposed by
38 subdivision (e) of Section 17041.

39 This section applies to income years beginning after
40 December 31, 1970.

1 SEC. 86. Section 23802 of the Revenue and Taxation
2 Code is amended to read:

3 23802. (a) Section 1363(a) of the Internal Revenue
4 Code, relating to the taxability of an S corporation, shall
5 not be applicable.

6 (b) Corporations qualifying under this chapter shall
7 continue to be subject to the taxes imposed under
8 Chapter 2 (commencing with Section 23101) and
9 Chapter 3 (commencing with Section 23501), except as
10 follows:

11 (1) The tax imposed under Section 23151 or 23501 shall
12 be imposed at a rate of 1½ percent rather than the rate
13 specified in those sections.

14 (2) In the case of an “S corporation” which is also a
15 financial corporation, the rate of tax specified in
16 paragraph (1) shall be increased by the excess of the rate
17 imposed under Section 23183 over the rate imposed
18 under Section 23151.

19 (c) An “S corporation” shall be subject to the
20 minimum franchise tax imposed under Section 23153.

21 (d) (1) For purposes of subdivision (b), an “S
22 corporation” shall be allowed a deduction under Section
23 24416 or 24416.1 (relating to net operating loss
24 deductions), but only with respect to losses incurred
25 during periods in which the corporation had in effect a
26 valid election to be treated as an “S corporation” for
27 purposes of this part.

28 (2) Section 1371(b) of the Internal Revenue Code,
29 relating to denial of carryovers between “C years” and “S
30 years,” shall apply for purposes of the tax imposed under
31 subdivision (b), except as provided in paragraph (1).

32 (3) The provisions of this subdivision shall not affect
33 the amount of any item of income or loss computed in
34 accordance with the provisions of Section 1366 of the
35 Internal Revenue Code, relating to pass-thru items to
36 shareholders.

37 (4) For purposes of subdivision (b) of Section 17276,
38 relating to limitations on loss carryovers, losses passed
39 through to shareholders of an “S corporation,” to the
40 extent otherwise allowable without application of that

1 subdivision, shall be fully included in the net operating
2 loss of that shareholder and then that subdivision shall be
3 applied to the entire net operating loss.

4 (e) For purposes of computing the taxes specified in
5 subdivision (b), an “S corporation” shall be allowed a
6 deduction from income for built-in gains and passive
7 investment income for which a tax has been imposed
8 under this part in accordance with the provisions of
9 Section 1374 of the Internal Revenue Code, relating to tax
10 imposed on certain built-in gains, or Section 1375 of the
11 Internal Revenue Code, relating to tax imposed on
12 passive investment income.

13 (f) For purposes of computing taxes imposed under
14 this part, as provided in subdivision (b)—

15 (1) An “S corporation” shall compute its deductions
16 for amortization and depreciation in accordance with the
17 provisions of Part 10 (commencing with Section 17001) of
18 Division 2.

19 (2) The provisions of Section 465 of the Internal
20 Revenue Code, relating to limitation of deductions to the
21 amount at risk, shall be applied in the same manner as in
22 the case of an individual.

23 (3) (A) The provisions of Section 469 of the Internal
24 Revenue Code, relating to limitations on passive activity
25 losses and credits, shall be applied in the same manner as
26 in the case of an individual. For purposes of the tax
27 imposed under Section 23151 or 23501, as modified by this
28 section, material participation shall be determined in
29 accordance with Section 469(h) of the Internal Revenue
30 Code, relating to certain closely held “C corporations”
31 and personal service corporations.

32 (B) For purposes of this paragraph, the “adjusted gross
33 income” of the “S corporation” shall be equal to its “net
34 income,” as determined under Section 24341 with the
35 modifications required by this subdivision, except that no
36 deduction shall be allowed for contributions allowed by
37 Section 24357.

38 (4) The exclusion provided under Section 18152.5 shall
39 not be allowed to an “S corporation.”

(g) The provisions of Section 1363(d) of the Internal Revenue Code, relating to recapture of LIFO benefits, shall be modified for purposes of this part to refer to Section 19102 in lieu of Section 6601 of the Internal Revenue Code.

SEC. 87. Section 23809 of the Revenue and Taxation Code is amended to read:

23809. There is hereby imposed a tax on built-in gains attributable to California sources, determined in accordance with the provisions of Section 1374 of the Internal Revenue Code, relating to tax imposed on certain built-in gains, as modified by this section.

(a) (1) The rate of tax specified in Section 1374(b)(1) of the Internal Revenue Code shall be equal to the rate of tax imposed under Section 23151 in lieu of the rate of tax specified in Section 11(b) of the Internal Revenue Code.

(2) In the case of an “S corporation” which is also a financial corporation, the rate of tax specified in paragraph (1) shall be increased by the excess of the rate imposed under Section 23183 over the rate imposed under Section 23151.

(b) The provisions of Section 1374(b)(3) of the Internal Revenue Code, relating to credits, shall be modified to provide that the tax imposed under subdivision (a) shall not be reduced by any credits allowed under this part.

(c) The provisions of Section 1374(b)(4) of the Internal Revenue Code, relating to coordination with Section 1201(a), shall not be applicable.

(d) In the case of corporation which is subject to the provisions of former Section 1374 of the Internal Revenue Code (prior to amendment by Public Law 99-514), the provisions of that section shall be modified to provide that:

(1) The tax specified in Section 1374(b)(1) of the Internal Revenue Code shall be equal to the rate of tax imposed under Section 23151 in lieu of the rate of tax specified in Section 11(b) of the Internal Revenue Code.

(2) In the case of an “S corporation” which is also a financial corporation, the rate of tax specified in paragraph (1) shall be increased by the excess of the rate imposed under Section 23183 over the rate imposed under Section 23151.

SEC. 88. Section 23811 of the Revenue and Taxation Code is amended to read:

23811. Except as otherwise provided in this section, there is hereby imposed a tax on passive investment income attributable to California sources, determined in accordance with the provisions of Section 1375 of the Internal Revenue Code, relating to tax imposed on passive investment income, as modified by this section.

(a) The tax imposed under this section shall not be imposed on an “S corporation” that has no excess net passive income for federal purposes determined in accordance with Section 1375 of the Internal Revenue Code.

(b) (1) The rate of tax shall be equal to the rate of tax imposed under Section 23151 in lieu of Section 11(b) of the Internal Revenue Code.

(2) In the case of an “S corporation” which is also a financial corporation, the rate of tax specified in paragraph (1) shall be increased by the excess of the rate imposed under Section 23183 over the rate imposed under Section 23151.

(c) The provisions of Section 1375(c)(1) of the Internal Revenue Code, relating to credits, shall be modified to provide that the tax imposed under subdivision (a) shall not be reduced by any credits allowed under this part.

(d) The term “subchapter C earnings and profits” as used in Sections 1362(d)(3) and 1375 of the Internal Revenue Code shall mean the subchapter C earnings and profits of the corporation attributable to California sources determined under this part, modified as provided in subdivision (e).

(e) (1) In the case of a corporation which elects to be treated as an “S corporation” for purposes of this part for its first income year beginning in 1987, or for its first

1 income year for which it has in effect a valid federal S
2 election, there shall be allowed as a deduction in
3 determining that corporation's subchapter C earnings
4 and profits at the close of any income year the amount of
5 any consent dividend (as provided in paragraph (2)) paid
6 after the close of ~~such~~ *that* income year.

7 (2) In the event there is a determination that a
8 corporation described in paragraph (1) has subchapter C
9 earnings and profits at the close of any income year, that
10 corporation shall be entitled to distribute a consent
11 dividend to its shareholders. The amount of the consent
12 dividend shall not exceed the difference between the
13 corporation's subchapter C earnings and profits
14 determined under subdivision (d) at the close of the
15 income year with respect to which the determination is
16 made and the corporation's subchapter C earnings and
17 profits for federal income tax purposes at the same date.
18 A consent dividend must be paid within 90 days of the
19 date of the determination that the corporation has
20 subchapter C earnings and profits. For this purpose, the
21 date of a determination means the effective date of a
22 closing agreement pursuant to Section 19441, the date an
23 assessment of tax imposed by this section becomes final,
24 or the date of execution by the corporation of an
25 agreement with the Franchise Tax Board relating to
26 liability for the tax imposed by this section. For purposes
27 of Part 10 and this part, a corporation must make the
28 election provided in Section 1368(e)(3) of the Internal
29 Revenue Code for any consent dividend.

30 (3) If a corporation distributes a consent dividend, it
31 shall claim the deduction provided in paragraph (1) by
32 filing a claim therefor with the Franchise Tax Board
33 within 120 days of the date of the determination specified
34 in paragraph (2).

35 (4) The collection of tax imposed by this section from
36 a corporation described in paragraph (2) shall be stayed
37 for 120 days after the date of the determination specified
38 in paragraph (2). If a claim is filed pursuant to paragraph
39 (3), collection of such tax shall be further stayed until the
40 date the claim is acted upon by the Franchise Tax Board.

(5) If a claim is filed pursuant to paragraph (3), the running of the statute of limitations on the making of assessments and actions for collection of the tax imposed by this section shall be suspended for a period of two years after the date of the determination specified in paragraph (2).

SEC. 89. Section 24346 of the Revenue and Taxation Code is amended to read:

24346. (a) For purposes of subdivision (a) of Section 24345, if real property is sold during any real property tax year, then—

(1) So much of the real property tax as is properly allocable to that part of ~~such~~ *the tax* year which ends on the day before the date of the sale shall be treated as a tax imposed on the seller; and

(2) So much of ~~such~~ *that* tax as is properly allocable to that part of ~~such~~ *that* year which begins on the date of the sale shall be treated as a tax imposed on the purchaser.

(b) (1) In the case of any sale of real property; if—

(A) A corporation may not, by reason of its method of accounting, deduct any amount for taxes unless paid; and

(B) The other party to the sale is (under the law imposing the real property tax) liable for the real property tax for the real property tax year;

then for purposes of subdivision (a) of Section 24345 the corporation shall be treated as having paid, on the date of the sale, so much of the tax as, under subdivision (a), is treated as imposed on the corporation. For purposes of the preceding sentence, if neither party is liable for the tax, then the party holding the property at the time the tax becomes a lien on the property shall be considered liable for the real property tax for the real property tax year.

(2) Subdivision (a) shall apply to income years beginning after December 31, 1960, but only in the case of sales after December 31, 1960.

(3) Subdivision (a) shall not apply to any real property tax, to the extent that the tax was allowable as a deduction under the Bank and Corporation Tax Law of 1954 to the

1 seller for an income year which began before January 1,
2 1961.

3 (4) In the case of any sale of real property, if the bank
4 or corporation's net income for the income year during
5 which the sale occurs is computed under an accrual
6 method of accounting, and if no election under
7 subdivision (b) of Section 24681 (relating to the accrual
8 of real property taxes) applies, then, for purposes of
9 subdivision (a) of Section 24345, that portion of the tax
10 that—

11 (A) Is treated, under subdivision (a), as imposed on
12 the corporation; and

13 (B) May not, by reason of the corporation's method of
14 accounting, be deducted by the corporation for any
15 income year, shall be treated as having accrued on the
16 date of the sale.

17 SEC. 90. Section 24356.4 of the Revenue and Taxation
18 Code is amended to read:

19 24356.4. (a) A taxpayer may elect to treat the cost of
20 any Section 24356.4 property as an expense that is not
21 chargeable to capital account. Any cost so treated shall be
22 allowed as a deduction for the income year in which the
23 taxpayer places the Section 24356.4 property in service.

24 (b) (1) An election made under this section for any
25 income year shall meet both of the following
26 requirements:

27 (A) Specify the items of Section 24356.4 property to
28 which the election applies and the cost of each of those
29 items that is to be taken into account under subdivision
30 (a).

31 (B) Be made on the taxpayer's original return of the
32 tax imposed by this part for the income year.

33 (2) Any election made under this section, and any
34 specifications contained in that election, may not be
35 revoked except with the consent of the Franchise Tax
36 Board.

37 (c) For purposes of this section:

38 (1) "Taxpayer" means a corporation engaged in a
39 trade or business within the Los Angeles Revitalization

1 Zone designated pursuant to Section 7102 of the
2 Government Code.

3 (2) “Section 24356.4 property” means any recovery
4 property that is all of the following:

5 (A) Section 1245 property (as defined in Section
6 1245(a)(3) of the Internal Revenue Code).

7 (B) Purchased and placed in service by the taxpayer
8 on or after September 1, 1992, and before the zone
9 expiration date.

10 (C) Used exclusively in a trade or business conducted
11 within the Los Angeles Revitalization Zone designated
12 pursuant to Section 7102 of the Government Code.

13 (3) “Purchase” means any acquisition of property, but
14 only if all of the following apply:

15 (A) The property is not acquired from a person whose
16 relationship to the person acquiring it would result in the
17 disallowance of losses under Section 267 or 707(b) of the
18 Internal Revenue Code (but, in applying Sections 267(b)
19 and 267(c) of the Internal Revenue Code, Section
20 267(c)(4) of the Internal Revenue Code shall be treated
21 as providing that the family of an individual shall include
22 only his or her spouse, ancestors, and lineal descendants).

23 (B) The property is not acquired by one member of an
24 affiliated group from another member of the same
25 affiliated group.

26 (C) The basis of the property in the hands of the
27 person acquiring it is not determined in whole or in part
28 by reference to the adjusted basis of the property in the
29 hands of the person from whom acquired.

30 (4) “Zone expiration date” means the date the Los
31 Angeles Revitalization Zone designation expires, is
32 repealed, or becomes inoperative pursuant to Section
33 7102, 7103, or 7104 of the Government Code.

34 (d) This section does not apply to any property
35 described in Section 168(f) of the Internal Revenue
36 Code, relating to property to which Section 168 of the
37 Internal Revenue Code does not apply.

38 (e) This section applies only to Section 24356.4
39 property that is used by the taxpayer exclusively in a

1 trade or business conducted in the Los Angeles
2 Revitalization Zone.

3 (f) Any amount deducted under subdivision (a) with
4 respect to Section 24356.4 property that ceases to be used
5 in the taxpayer's trade or business within the Los Angeles
6 Revitalization Zone at any time before the close of the
7 second income year after the property was placed in
8 service shall be included in income in the income year in
9 which property ceases to be so used.

10 (g) This section shall be inoperative on the first day of
11 the income year beginning on or after the determination
12 date, and each income year thereafter, with respect to the
13 taxpayer's business activities within a geographic area
14 that is excluded from the map pursuant to Section 7102 of
15 the Government Code, or an excluded area determined
16 pursuant to Section 7104 of the Government Code. The
17 determination date is the earlier of the first effective date
18 of a determination under subdivision (c) of Section 7102
19 of the Government Code occurring after December 1,
20 1994, or the first effective date of an exclusion of an area
21 from the amended Los Angeles Revitalization Zone
22 under Section 7104 of the Government Code.

23 (h) This section shall remain in effect only until
24 December 1, 1998, and as of that date is repealed.

25 SEC. 91. Section 24356.8 of the Revenue and Taxation
26 Code is amended to read:

27 24356.8. (a) For each income year beginning on or
28 after January 1, 1995, and before January 1, 2003, a
29 taxpayer may elect to treat the cost of any Section 24356.8
30 property as an expense that is not chargeable to the
31 capital account. Any cost so treated shall be allowed as a
32 deduction for the income year in which the Section
33 24356.8 property is placed in service.

34 (b) (1) An election under this section for any income
35 year shall meet both of the following requirements:

36 (A) Specify the items of Section 24356.8 property to
37 which the election applies and the portion of the cost of
38 each of those items that is to be taken into account under
39 subdivision (a).

1 (B) Be made on the taxpayer's return of the tax
2 imposed by this part for the income year.

3 (2) Any election made under this section, and any
4 specification contained in that election, may not be
5 revoked except with the consent of the Franchise Tax
6 Board.

7 (c) (1) For purposes of this section, "Section 24356.8
8 property" means any recovery property that is Section
9 1245 property (as defined in Section 1245(a)(3) of the
10 Internal Revenue Code) and that the taxpayer acquires
11 by purchase for exclusive use in a trade or business
12 conducted within a LAMBRA.

13 (2) For purposes of paragraph (1), "purchase" means
14 any acquisition of property, but only if all of the following
15 apply:

16 (A) The property is not acquired from a person whose
17 relationship to the person acquiring it would result in the
18 disallowance of losses under Section 267 or 707(b) of the
19 Internal Revenue Code (but, in applying Sections 267(b)
20 and 267(c) of the Internal Revenue Code for purposes of
21 this section, Section 267(c)(4) of the Internal Revenue
22 Code shall be treated as providing that the family of an
23 individual shall include only his or her spouse, ancestors,
24 and lineal descendants).

25 (B) The property is not acquired by one component
26 member of an affiliated group from another component
27 member of the same affiliated group.

28 (C) The basis of the property in the hands of the
29 person acquiring it is not determined in whole or in part
30 by reference to the adjusted basis of that property in the
31 hands of the person from whom acquired.

32 (3) For purposes of this section, the cost of property
33 does not include so much of the basis of that property as
34 is determined by reference to the basis of other property
35 held at any time by the person acquiring that property.

36 (4) This section shall not apply to any property for
37 which the taxpayer may not make an election for the
38 income year under Section 179 of the Internal Revenue
39 Code because of the provisions of Section 179(d) of the
40 Internal Revenue Code.

(5) For purposes of subdivision (b), both of the following apply:

(A) All members of an affiliated group shall be treated as one taxpayer.

(B) The taxpayer shall apportion the dollar limitation contained in subdivision (f) among the component members of the affiliated group in whatever manner the board shall by regulations prescribe.

(6) For purposes of paragraphs (2) and (5), “affiliated group” has the meaning assigned to it by Section 1504 of the Internal Revenue Code, except that, for these purposes, the phrase “more than 50 percent” shall be substituted for the phrase “at least 80 percent” each place it appears in Section 1504(a) of the Internal Revenue Code.

(7) This section shall not apply to any property described in Section 168(f) of the Internal Revenue Code.

(8) In the case of an S corporation, the dollar limitation contained in subdivision (f) shall be applied at the entity level and at the shareholder level.

(d) For purposes of this section:

(1) “LAMBRA” means a local agency military base recovery area designated in accordance with the provisions of Section 7114 of the Government Code.

(2) “Taxpayer” means a corporation that conducts a trade or business within a LAMBRA and, for the first two income years, has a net increase in jobs (defined as 2,000 paid hours per employee per year) of one or more employees in the LAMBRA.

(A) The net increase in the number of jobs shall be determined by subtracting the total number of full-time employees (defined as 2,000 paid hours per employee per year) the taxpayer employed in this state in the income year prior to commencing business operations in the LAMBRA from the total number of full-time employees the taxpayer employed in this state during the second income year after commencing business operations in the LAMBRA. For taxpayers who commence doing business in this state with their LAMBRA business operation, the

1 number of employees for the income year prior to
 2 commencing business operations in the LAMBRA shall
 3 be zero. If the taxpayer has a net increase in jobs in the
 4 state, the credit shall be allowed only if one or more
 5 full-time employees is employed within the LAMBRA.

6 (B) The total number of employees employed in the
 7 LAMBRA shall equal the sum of both of the following:

8 (i) The total number of hours worked in the LAMBRA
 9 for the taxpayer by employees (not to exceed 2,000 hours
 10 per employee) who are paid an hourly wage divided by
 11 2,000.

12 (ii) The total number of months worked in the
 13 LAMBRA for the taxpayer by employees who are salaried
 14 employees divided by 12.

15 (C) In the case of a taxpayer that first commences
 16 doing business in the LAMBRA during the income year,
 17 for purposes of clauses (i) and (ii), respectively, of
 18 subparagraph (B) the divisors “2,000” and “12” shall be
 19 multiplied by a fraction, the numerator of which is the
 20 number of months of the income year that the taxpayer
 21 was doing business in the LAMBRA and the denominator
 22 of which is 12.

23 (e) Any taxpayer who elects to be subject to this
 24 section shall not be entitled to claim additional
 25 depreciation pursuant to Section 24356 with respect to
 26 any property that constitutes Section 24356.8 property.

27 (f) The deduction allowable under subdivision (a) for
 28 any income year shall not exceed the following applicable
 29 amount for the income year of the designation of a
 30 LAMBRA and each income year thereafter:

31	The applicable amount is:	
32		
33	Income year of designation	\$ 5,000
34	1st income year thereafter	5,000
35	2nd income year thereafter	7,500
36	3rd income year thereafter	7,500
37	Each income year thereafter	10,000

(g) This section shall apply only to property that is used exclusively in a trade or business conducted within a LAMBRA.

(h) (1) Any amounts deducted under subdivision (a) with respect to property that ceases to be used in the trade or business within a LAMBRA at any time before the close of the second income year after the property was placed in service shall be included in income for that year.

(2) At the close of the second income year, if the taxpayer has not increased the number of its employees as determined by paragraph (2) of subdivision (d), then the amount of the deduction previously claimed shall be added to the taxpayer's net income for the taxpayer's second income year.

(i) Any taxpayer who elects to be subject to this section shall not be entitled to claim for the same property the deduction under Section 179 of the Internal Revenue Code, relating to an election to expense certain depreciable business assets.

(j) This section shall remain in effect only until December 1, 2003, and as of that date is repealed.

SEC. 92. Section 24357 of the Revenue and Taxation Code is amended to read:

24357. (a) There shall be allowed as a deduction any charitable contribution (as defined in Section 24359) payment of which is made within the income year. A charitable contribution shall be allowable as a deduction only if verified under regulations prescribed by the Franchise Tax Board.

(b) In the case of a corporation reporting its income on the accrual basis, if—

(1) The board of directors authorizes a charitable contribution during any income year; and

(2) Payment of the contribution is made after the close of that income year and on or before the 15th day of the third month following the close of that income year,

then the corporation may elect to treat the contribution as paid during that income year. The election may be

1 made only at the time of the filing of the return for that
2 income year, and shall be signified in ~~such~~ *that* manner
3 as the Franchise Tax Board shall by regulations prescribe.

4 (c) For purposes of this section, payment of a
5 charitable contribution that consists of a future interest in
6 tangible personal property shall be treated as made only
7 when all intervening interests in, and rights to the actual
8 possession or enjoyment of, the property have expired or
9 are held by persons other than the taxpayer or those
10 standing in a relationship to the taxpayer described in
11 Section 24428. For purposes of the preceding sentence, a
12 fixture which is intended to be severed from the real
13 property shall be treated as tangible personal property.

14 (d) No deduction shall be allowed under this section
15 for traveling expenses (including amounts expended for
16 meals and lodging) while away from home, whether paid
17 directly or by reimbursement, unless there is no
18 significant element of personal pleasure, recreation, or
19 vacation in that travel.

20 SEC. 93. Section 24358 of the Revenue and Taxation
21 Code is amended to read:

22 24358. (a) In the case of a corporation, the total
23 deductions under Section 24357 for any income year shall
24 not exceed 10 percent of the taxpayer's net income
25 computed without regard to any of the following:

26 (1) Subdivision (e) of Section 23802, relating to a
27 deduction for built-in gains and passive investment
28 income.

29 (2) Sections 24357 to 24359, inclusive, relating to the
30 deduction for contributions.

31 (3) Article 2 (commencing with Section 24401) of
32 Chapter 7 (except Sections 24407 to 24409, inclusive,
33 relating to organizational expenses).

34 (b) Section 170(d)(2) of the Internal Revenue Code,
35 relating to carryovers of excess contributions, shall apply
36 with respect to excess contributions made during income
37 years beginning on or after January 1, 1996.

38 SEC. 94. Section 24359 of the Revenue and Taxation
39 Code is amended to read:

24359. For purposes of Sections 24357 to 24359, inclusive, the term “charitable contribution” means a contribution or gift to or for the use of—

(a) A state, a possession of the United States, or any political subdivision of any of the foregoing, or the United States or the District of Columbia, but only if the contribution or gift is made for exclusively public purposes.

(b) A corporation, trust, or community chest, fund, or foundation—

(1) Created or organized in the United States or in any possession thereof, or under the law of the United States, any state, the District of Columbia, or any possession of the United States;

(2) Organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals;

(3) No part of the net earnings of which inures to the benefit of any private shareholder or individual; and

(4) Which is not disqualified for tax exemption under Section 23701d by reason of attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

A contribution or gift by a corporation to a trust, chest, fund, or foundation shall be deductible by reason of this section only if it is to be used within the United States or any of its possessions exclusively for purposes specified in paragraph (2). Rules similar to the rules of subdivision (b) of Section 23701d shall apply for purposes of this section.

(c) A post or organization of war veterans, or an auxiliary unit or society of, or trust or foundation for, any such post or organization—

(1) Organized in the United States or any of its possessions, and

(2) No part of the net earnings of which inures to the benefit of any private shareholder or individual.

(d) A cemetery company owned and operated exclusively for the benefit of its members, or any corporation chartered solely for burial purposes as a cemetery corporation and not permitted by its charter to engage in any business not necessarily incident to that purpose, if the company or corporation is not operated for profit and no part of the net earnings of the company or corporation inures to the benefit of any private shareholder or individual.

SEC. 95. Section 24402 of the Revenue and Taxation Code is amended to read:

24402. (a) A portion of the dividends received during the income year declared from income which has been included in the measure of the taxes imposed under Chapter 2 (commencing with Section 23101), Chapter 2.5 (commencing with Section 23400), or Chapter 3 (commencing with Section 23501) upon the taxpayer declaring the dividends.

(b) The portion of dividends which may be deducted under this section shall be as follows:

(1) In the case of any dividend described in subdivision (a), received from a “more than 50 percent owned corporation,” 100 percent.

(2) In the case of any dividend described in subdivision (a), received from a “20 percent owned corporation,” 80 percent.

(3) In the case of any dividend described in subdivision (a), received from a corporation that is less than 20 percent owned, 70 percent.

(c) For purposes of this section:

(1) The term “more than 50 percent owned corporation” means any corporation if more than 50 percent of the stock of that corporation (by vote and value) is owned by the taxpayer. For purposes of the preceding sentence, stock described in Section 1504(a)(4) of the Internal Revenue Code shall not be taken into account.

(2) The term “20 percent owned corporation” means any corporation if 20 percent or more of the stock of that corporation (by vote and value) is owned by the taxpayer. For purposes of the preceding sentence, stock described in Section 1504(a)(4) of the Internal Revenue Code shall not be taken into account.

SEC. 96. Section 24407 of the Revenue and Taxation Code is amended to read:

24407. The organizational expenditures of a corporation may, at the election of the corporation (made in accordance with regulations prescribed by the Franchise Tax Board), be treated as deferred expenses. In computing net income, the deferred expenses shall be allowed as a deduction ratably over that period of not less than 60 months as may be selected by the corporation (beginning with the month in which the corporation begins business).

SEC. 97. Section 24408 of the Revenue and Taxation Code is amended to read:

24408. The term “organizational expenditures” means any expenditure that meets all of the following requirements:

(a) Is incident to the creation of the corporation.

(b) Is chargeable to capital account.

(c) Is of a character which, if expended incident to the creation of a corporation having a limited life, would be amortizable over that life.

SEC. 98. Section 24409 of the Revenue and Taxation Code is amended to read:

24409. The election provided by Section 24407 may be made for any income year beginning after December 31, 1960, but only if made not later than the time prescribed by law for filing the return for that income year (including extensions thereof). The period so elected shall be adhered to in computing the income of the corporation for the income year for which the election is made and all subsequent income years. The election shall apply only with respect to the expenditures paid or incurred on or after June 23, 1961.

1 SEC. 99. Section 24411 of the Revenue and Taxation
2 Code is amended to read:

3 24411. (a) For purposes of those taxpayers electing to
4 compute income under Section 25110, 100 percent of the
5 qualifying dividends described in subdivision (c) and 75
6 percent of other qualifying dividends to the extent not
7 otherwise allowed as a deduction or eliminated from
8 income. “Qualifying dividends” means those received by
9 the water’s-edge group from corporations if both of the
10 following conditions are satisfied:

11 (1) The average of the property, payroll, and sales
12 factors within the United States for the corporation is less
13 than 20 percent.

14 (2) More than 50 percent of the total combined voting
15 power of all classes of stock entitled to vote is owned
16 directly or indirectly by the water’s-edge group.

17 (b) The water’s-edge group consists of corporations
18 whose income and apportionment factors are taken into
19 account pursuant to Section 25110.

20 (c) Dividends derived from a construction project, the
21 location of which is not subject to the taxpayer’s control.

22 For purposes of this subdivision:

23 (1) “Construction project” means any activity which
24 meets the following requirements:

25 (A) Is undertaken for any entity, including a
26 governmental entity, which is not affiliated with the
27 taxpayer.

28 (B) The majority of its cost of performance is
29 attributable to an addition to real property or an
30 alteration of land or any improvement thereto as those
31 terms are utilized for purposes of this code.

32 “Construction project” does not include the operation,
33 rental, leasing, or depletion of real property, land, or any
34 improvement thereto.

35 (2) “Location of which is not subject to the taxpayer’s
36 control” means that the place at which the majority of the
37 construction takes place results from the nature or
38 character of the construction project and not as a result
39 of the terms of the contract or agreement governing the
40 construction project.

1 SEC. 100. Section 24416 of the Revenue and Taxation
2 Code is amended to read:

3 24416. Except as provided in Sections 24416.1 and
4 24416.2, a net operating loss deduction shall be allowed in
5 computing net income under Section 24341 and shall be
6 determined in accordance with Section 172 of the
7 Internal Revenue Code, except as otherwise provided.

8 (a) (1) Net operating losses attributable to income
9 years beginning before January 1, 1987, shall not be
10 allowed.

11 (2) A net operating loss shall not be carried forward to
12 any income year beginning before January 1, 1987.

13 (b) (1) Except as provided in paragraphs (2) and (3),
14 the provisions of Section 172(b)(2) of the Internal
15 Revenue Code, relating to the amount of carryovers, shall
16 be modified so that 50 percent of the entire amount of the
17 net operating loss for any income year shall not be eligible
18 for carryover to any subsequent income year.

19 (2) In the case of a taxpayer who has a net operating
20 loss in an income year beginning on or after January 1,
21 1994, and who operates a new business during that
22 income year, each of the following shall apply to each loss
23 incurred during the first three income years of operating
24 the new business:

25 (A) If the net operating loss is equal to or less than the
26 net loss from the new business, 100 percent of the net
27 operating loss shall be carried forward as provided in
28 paragraph (2) of subdivision (e).

29 (B) If the net operating loss is greater than the net loss
30 from the new business, the net operating loss shall be
31 carried over as follows:

32 (i) With respect to an amount equal to the net loss
33 from the new business, 100 percent of that amount shall
34 be carried forward as provided in paragraph (2) of
35 subdivision (e).

36 (ii) With respect to the portion of the net operating
37 loss that exceeds the net loss from the new business, 50
38 percent of that amount shall be a net operating loss
39 carryover to each of the five taxable years following the
40 taxable year of the loss.

(C) For purposes of Section 172(b)(2) of the Internal Revenue Code, the amount described in clause (ii) of subparagraph (B) shall be absorbed before the amount described in clause (i) of subparagraph (B).

(3) In the case of a taxpayer who has a net operating loss in an income year beginning on or after January 1, 1994, and who operates an eligible small business during that income year, each of the following shall apply:

(A) If the net operating loss is equal to or less than the net loss from the eligible small business, 100 percent of the net operating loss shall be carried forward to the income years specified in paragraph (1) of subdivision (e).

(B) If the net operating loss is greater than the net loss from the eligible small business, the net operating loss shall be carried over as follows:

(i) With respect to an amount equal to the net loss from the eligible small business, 100 percent of that amount shall be carried forward to each of the five income years following the income year of the loss.

(ii) With respect to the portion of the net operating loss that exceeds the net loss from the eligible small business, 50 percent of that amount shall be a net operating loss carryover to each of the five income years following the income year of the loss.

(C) For purposes of Section 172(b)(2) of the Internal Revenue Code, the amount described in clause (ii) of subparagraph (B) shall be absorbed before the amount described in clause (i) of subparagraph (B).

(4) In the case of a taxpayer who has a net operating loss in an income year beginning on or after January 1, 1994, and who operates a business that qualifies as both a new business and an eligible small business under this section, that business shall be treated as a new business for the first three income years of the new business.

(5) In the case of a taxpayer who has a net operating loss in an income year beginning on or after January 1, 1994, and who operates more than one business, and more than one of those businesses qualifies as either a new business or an eligible small business under this section, paragraph (2) shall be applied first, except that if there

1 is any remaining portion of the net operating loss after
2 application of clause (i) of subparagraph (B) of
3 paragraph (2), paragraph (3) shall be applied to the
4 remaining portion of the net operating loss as though that
5 remaining portion of the net operating loss constituted
6 the entire net operating loss.

7 (6) For purposes of this section, “net loss” means the
8 amount of net loss after application of Sections 465 and
9 469 of the Internal Revenue Code.

10 (c) For any income year in which the taxpayer has in
11 effect a water’s-edge election under Section 25110, the
12 deduction of a net operating loss carryover shall be
13 denied to the extent that the net operating loss carryover
14 was determined by taking into account the income and
15 factors of an affiliated corporation in a combined report
16 whose income and apportionment factors would not have
17 been taken into account if a water’s-edge election under
18 Section 25110 had been in effect for the income year in
19 which the loss was incurred.

20 (d) Net operating loss carrybacks shall not be allowed.

21 (e) (1) Except as provided in paragraphs (2), (3), and
22 (4), for each income year beginning on or after January
23 1, 1987, Section 172(b)(1)(A)(ii) of the Internal Revenue
24 Code, relating to years to which net operating losses may
25 be carried, is modified to substitute “five income years”
26 in lieu of “15 taxable years.”

27 (2) In the case of a “new business,” the “five income
28 years” referred to in paragraph (1) shall be modified to
29 read as follows:

30 (A) “Eight income years” for a net operating loss
31 attributable to the first income year of that new business.

32 (B) “Seven income years” for a net operating loss
33 attributable to the second income year of that new
34 business.

35 (C) “Six income years” for a net operating loss
36 attributable to the third income year of that new business.

37 (3) For any carryover of a net operating loss for which
38 a deduction is denied by Section 24416.3, the carryover
39 period specified in this subdivision shall be extended as
40 follows:

1 (A) By one year for a net operating loss attributable to
2 income years beginning in 1991.

3 (B) By two years for a net operating loss attributable
4 to income years beginning prior to January 1, 1991.

5 (4) The net operating loss attributable to income years
6 beginning on or after January 1, 1987, and before January
7 1, 1994, shall be a net operating loss carryover to each of
8 the 10 income years following the year of the loss if it is
9 incurred by a corporation that was either of the following:

10 (A) Under the jurisdiction of the court in a Title 11 or
11 similar case at any time prior to January 1, 1994. The loss
12 carryover provided in the preceding sentence shall not
13 apply to any loss incurred in an income year after the
14 income year during which the corporation is no longer
15 under the jurisdiction of the court in a Title 11 or similar
16 case.

17 (B) In receipt of assets acquired in a transaction that
18 qualifies as a tax-free reorganization under Section
19 368(a)(1)(G) of the Internal Revenue Code.

20 (f) For purposes of this section:

21 (1) “Eligible small business” means any trade or
22 business that has gross receipts, less returns and
23 allowances, of less than one million dollars (\$1,000,000)
24 during the income year.

25 (2) Except as provided in subdivision (g), “new
26 business” means any trade or business activity that is first
27 commenced in this state on or after January 1, 1994.

28 (3) “Title 11 or similar case” shall have the same
29 meaning as in Section 368(a)(3) of the Internal Revenue
30 Code.

31 (4) In the case of any trade or business activity
32 conducted by a partnership or an S corporation,
33 paragraphs (1) and (2) shall be applied to the partnership
34 or S corporation.

35 (g) For purposes of this section, in determining
36 whether a trade or business activity qualifies as a new
37 business under paragraph (2) of subdivision (e), the
38 following rules shall apply:

39 (1) In any case where a taxpayer purchases or
40 otherwise acquires all or any portion of the assets of an

1 existing trade or business (irrespective of the form of
2 entity) that is doing business in this state (within the
3 meaning of Section 23101), the trade or business
4 thereafter conducted by the taxpayer (or any related
5 person) shall not be treated as a new business if the
6 aggregate fair market value of the acquired assets
7 (including real, personal, tangible, and intangible
8 property) used by the taxpayer (or any related person)
9 in the conduct of its trade or business exceeds 20 percent
10 of the aggregate fair market value of the total assets of the
11 trade or business being conducted by the taxpayer (or
12 any related person). For purposes of this paragraph only,
13 the following rules shall apply:

14 (A) The determination of the relative fair market
15 values of the acquired assets and the total assets shall be
16 made as of the last day of the first income year in which
17 the taxpayer (or any related person) first uses any of the
18 acquired trade or business assets in its business activity.

19 (B) Any acquired assets that constituted property
20 described in Section 1221(1) of the Internal Revenue
21 Code in the hands of the transferor shall not be treated as
22 assets acquired from an existing trade or business, unless
23 those assets also constitute property described in Section
24 1221(1) of the Internal Revenue Code in the hands of the
25 acquiring taxpayer (or related person).

26 (2) In any case where a taxpayer (or any related
27 person) is engaged in one or more trade or business
28 activities in this state, or has been engaged in one or more
29 trade or business activities in this state within the
30 preceding 36 months (“prior trade or business activity”),
31 and thereafter commences an additional trade or
32 business activity in this state, the additional trade or
33 business activity shall only be treated as a new business if
34 the additional trade or business activity is classified under
35 a different division of the Standard Industrial
36 Classification (SIC) Manual published by the United
37 States Office of Management and Budget, 1987 edition,
38 than are any of the taxpayer’s (or any related person’s)
39 current or prior trade or business activities.

1 (3) In any case where a taxpayer, including all related
2 persons, is engaged in trade or business activities wholly
3 outside of this state and the taxpayer first commences
4 doing business in this state (within the meaning of Section
5 23101) after December 31, 1993 (other than by purchase
6 or other acquisition described in paragraph (1)), the
7 trade or business activity shall be treated as a new
8 business under paragraph (2) of subdivision (e).

9 (4) In any case where the legal form under which a
10 trade or business activity is being conducted is changed,
11 the change in form shall be disregarded and the
12 determination of whether the trade or business activity
13 is a new business shall be made by treating the taxpayer
14 as having purchased or otherwise acquired all or any
15 portion of the assets of an existing trade or business under
16 the rules of paragraph (1) of this subdivision.

17 (5) "Related person" shall mean any person that is
18 related to the taxpayer under either Section 267 or 318 of
19 the Internal Revenue Code.

20 (6) "Acquire" shall include any transfer, whether or
21 not for consideration.

22 (7) (A) For income years beginning on or after
23 January 1, 1997, the term "new business" shall include any
24 taxpayer that is engaged in biopharmaceutical activities
25 or other biotechnology activities that are described in
26 Codes 2833 to 2836, inclusive, of the Standard Industrial
27 Classification (SIC) Manual published by the United
28 States Office of Management and Budget, 1987 edition,
29 and as further amended, and that has not received
30 regulatory approval for any product from the United
31 States Food and Drug Administration.

32 (B) For purposes of this paragraph:

33 (i) "Biopharmaceutical activities" means those
34 activities which use organisms or materials derived from
35 organisms, and their cellular, subcellular, or molecular
36 components, in order to provide pharmaceutical
37 products for human or animal therapeutics and
38 diagnostics. Biopharmaceutical activities make use of
39 living organisms to make commercial products, as

1 opposed to pharmaceutical activities which make use of
2 chemical compounds to produce commercial products.

3 (ii) “Other biotechnology activities” means activities
4 consisting of the application of recombinant DNA
5 technology to produce commercial products, as well as
6 activities regarding pharmaceutical delivery systems
7 designed to provide a measure of control over the rate,
8 duration, and site of pharmaceutical delivery.

9 (h) For purposes of corporations whose net income is
10 determined under Chapter 17 (commencing with
11 Section 25101), Section 25108 shall apply to each of the
12 following:

13 (1) The amount of net operating loss incurred in any
14 income year which may be carried forward to another
15 income year.

16 (2) The amount of any loss carry forward which may
17 be deducted in any income year.

18 (i) The provisions of Section 172(b)(1)(K) of the
19 Internal Revenue Code, relating to bad debt losses of
20 commercial banks, shall not be applicable.

21 (j) The Franchise Tax Board may prescribe
22 appropriate regulations to carry out the purposes of this
23 section, including any regulations necessary to prevent
24 the avoidance of the purposes of this section through
25 splitups, shell corporations, partnerships, tiered
26 ownership structures, or otherwise.

27 (k) The Franchise Tax Board may reclassify any net
28 operating loss carryover determined under either
29 paragraph (2) or (3) of subdivision (b) as a net operating
30 loss carryover under paragraph (1) of subdivision (b)
31 upon a showing that the reclassification is necessary to
32 prevent evasion of the purposes of this section.

33 (l) The amendments made by the act adding this
34 subdivision shall be operative for income years beginning
35 on or after January 1, 1997.

36 SEC. 101. Section 24416.2 of the Revenue and
37 Taxation Code is amended to read:

38 24416.2. The term “qualified taxpayer” as used in
39 Section 24416.1 means any of the following:

(a) A corporation engaged in the conduct of a trade or business within an enterprise zone designated pursuant to Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(1) A net operating loss shall not be a net operating loss carryback for any income year and a net operating loss for any income year beginning on or after the date that the area in which the taxpayer conducts a trade or business is designated as an enterprise zone shall be a net operating loss carryover to each of the 15 income years following the income year of loss.

(2) For purposes of this subdivision:

(A) “Net operating loss” means the loss determined under Section 172 of the Internal Revenue Code, as modified by Section 24416.1, attributable to the taxpayer’s business activities within the enterprise zone (as defined in Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code) prior to the enterprise zone expiration date. That attributable loss shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101), modified for purposes of this section by substituting “enterprise zone” for “this state.”

(B) A net operating loss carryover shall be a deduction only with respect to the taxpayer’s business income attributable to the enterprise zone (as defined in Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code) determined in accordance with the provisions of Chapter 17 (commencing with Section 25101), modified for purposes of this section by substituting “enterprise zone” for “this state.”

(C) “Enterprise zone expiration date” means the date the enterprise zone designation expires, is no longer binding, or becomes inoperative.

(b) A corporation engaged in the conduct of a trade or business within the Los Angeles Revitalization Zone designated pursuant to Section 7102 of the Government Code.

1 (1) (A) A net operating loss shall not be a net
2 operating loss carryback for any income year and, except
3 as provided in subparagraph (B), a net operating loss for
4 any income year beginning on or after the date the area
5 in which the taxpayer conducts a trade or business is
6 designated the Los Angeles Revitalization Zone shall be
7 a net operating loss carryover to each following income
8 year that ends before the Los Angeles Revitalization
9 Zone expiration date or to each of the 15 income years
10 following the income year of loss, if longer.

11 (B) In the case of a financial institution to which
12 Section 585, 586, or 593 of the Internal Revenue Code
13 applies, a net operating loss for any income year
14 beginning on or after January 1, 1984, shall be a net
15 operating loss carryover to each of the five years
16 following the income year of the loss. Subdivision (b) of
17 Section 24416.1 shall not apply.

18 (2) For the purposes of this subdivision:

19 (A) “Net operating loss” means the loss determined
20 under Section 172 of the Internal Revenue Code, as
21 modified by Section 24416.1, attributable to the taxpayer’s
22 business activities within the Los Angeles Revitalization
23 Zone (as defined in Section 7102 of the Government
24 Code) prior to the Los Angeles Revitalization Zone
25 expiration date. The attributable loss shall be determined
26 in accordance with the provisions of Chapter 17
27 (commencing with Section 25101), modified as follows:

28 (i) The loss shall be apportioned to the Los Angeles
29 Revitalization Zone by multiplying the loss from the
30 business by a fraction, the numerator of which is the
31 property factor plus the payroll factor, and the
32 denominator of which is two.

33 (ii) “The Los Angeles Revitalization Zone” shall be
34 substituted for this state.

35 (B) A net operating loss carryover shall be a deduction
36 only with respect to the taxpayer’s business income
37 attributable to the Los Angeles Revitalization Zone (as
38 defined in Section 7102 of the Government Code)
39 determined in accordance with the provisions of
40 paragraph (3).

1 (3) Attributable income shall be that portion of the
2 taxpayer's California source business income which is
3 apportioned to the Los Angeles Revitalization Zone. For
4 that purpose, the taxpayer's business income attributable
5 to sources in this state first shall be determined in
6 accordance with the provisions of Chapter 17
7 (commencing with Section 25101). That business income
8 shall be further apportioned to the Los Angeles
9 Revitalization Zone in accordance with the provisions of
10 Article 2 (commencing with Section 25120) of Chapter
11 17, modified as follows:

12 (A) Business income shall be apportioned to the Los
13 Angeles Revitalization Zone by multiplying total
14 California business income of the taxpayer by a fraction,
15 the numerator of which is the property factor plus the
16 payroll factor, and the denominator of which is two.

17 (B) The property factor is a fraction, the numerator of
18 which is the average value of the taxpayer's real and
19 tangible personal property owned or rented and used in
20 the Los Angeles Revitalization Zone during the income
21 year and the denominator of which is the average value
22 of all the taxpayer's real and tangible personal property
23 owned or rented and used in this state during the income
24 year.

25 (C) The payroll factor is a fraction, the numerator of
26 which is the total amount paid by the taxpayer in the Los
27 Angeles Revitalization Zone during the income year for
28 compensation, and the denominator of which is the total
29 compensation paid by the taxpayer in this state during the
30 income year.

31 (4) "Los Angeles Revitalization Zone expiration date"
32 means the date the Los Angeles Revitalization Zone
33 designation expires, is repealed, or becomes inoperative
34 pursuant to Section 7102, 7103, or 7104 of the Government
35 Code.

36 (5) This subdivision shall be inoperative on the first
37 day of the income year beginning on or after the
38 determination date, and each income year thereafter,
39 with respect to the taxpayer's business activities within a
40 geographic area that is excluded from the map pursuant

1 to Section 7102 of the Government Code, or an excluded
2 area determined pursuant to Section 7104 of the
3 Government Code. The determination date is the earlier
4 of the first effective date of a determination under
5 subdivision (c) of Section 7102 of the Government Code
6 occurring after December 1, 1994, or the first effective
7 date of an exclusion of an area from the amended Los
8 Angeles Revitalization Zone under Section 7104 of the
9 Government Code. However, if the taxpayer has any
10 unused loss amount as of the date this section becomes
11 inoperative, that unused loss amount may continue to be
12 carried forward as provided in this subdivision.

13 (6) This subdivision shall cease to be operative on
14 January 1, 1998. However, any unused net operating loss
15 may continue to be carried over to following years as
16 provided in this subdivision.

17 (c) For each income year beginning on or after
18 January 1, 1995, and before January 1, 2003, a taxpayer
19 engaged in the conduct of a trade or business within a
20 LAMBRA.

21 (1) (A) A net operating loss shall not be a net
22 operating loss carryback for any income year and, except
23 as provided in subparagraph (B), a net operating loss for
24 any income year beginning on or after the date the area
25 in which the taxpayer conducts a trade or business is
26 designated a LAMBRA shall be a net operating loss
27 carryover to each following income year that ends before
28 the LAMBRA expiration date or to each of the 15 income
29 years following the income year of loss, if longer.

30 (B) In the case of a financial institution to which
31 Section 585, 586, or 593 of the Internal Revenue Code
32 applies, a net operating loss for any income year
33 beginning on or after January 1, 1984, shall be a net
34 operating loss carryover to each of the five years
35 following the income year of the loss. Subdivision (b) of
36 Section 24416.1 shall not apply.

37 (2) For the purposes of this subdivision:

38 (A) “LAMBRA” means a local agency military base
39 recovery area designated in accordance with Section 7114
40 of the Government Code.

(B) “Taxpayer” means a corporation that conducts a trade or business within a LAMBRA and, for the first two income years, has a net increase in jobs (defined as 2,000 paid hours per employee per year) of one or more employees in the LAMBRA and this state.

(i) The net increase in the number of jobs shall be determined by subtracting the total number of full-time employees (defined as 2,000 paid hours per employee per year) the taxpayer employed in this state in the income year prior to commencing business operations in the LAMBRA from the total number of full-time employees the taxpayer employed in this state during the second income year after commencing business operations in the LAMBRA. For taxpayers who commence doing business in this state with their LAMBRA business operation, the number of employees for the income year prior to commencing business operations in the LAMBRA shall be zero. The deduction shall be allowed only if the taxpayer has a net increase in jobs in the state, and if one or more full-time employees is employed within the LAMBRA.

(ii) The total number of employees employed in the LAMBRA shall equal the sum of both of the following:

(I) The total number of hours worked in the LAMBRA for the taxpayer by employees (not to exceed 2,000 hours per employee) who are paid an hourly wage divided by 2,000.

(II) The total number of months worked in the LAMBRA for the taxpayer by employees who are salaried employees divided by 12.

(iii) In the case of a taxpayer that first commences doing business in the LAMBRA during the income year, for purposes of subclauses (I) and (II), respectively, of clause (ii) the divisors “2,000” and “12” shall be multiplied by a fraction, the numerator of which is the number of months of the income year that the taxpayer was doing business in the LAMBRA and the denominator of which is 12.

(C) “Net operating loss” means the loss determined under Section 172 of the Internal Revenue Code, as

1 modified by Section 24416.1, attributable to the taxpayer's
2 business activities within a LAMBRA prior to the
3 LAMBRA expiration date. The attributable loss shall be
4 determined in accordance with the provisions of Chapter
5 17 (commencing with Section 25101), modified as follows:

6 (i) Loss shall be apportioned to a LAMBRA by
7 multiplying the loss from the business by a fraction, the
8 numerator of which is the property factor plus the payroll
9 factor, and the denominator of which is two.

10 (ii) "The LAMBRA" shall be substituted for "this
11 state."

12 (D) A net operating loss carryover shall be a deduction
13 only with respect to the taxpayer's business income
14 attributable to a LAMBRA determined in accordance
15 with the provisions of Chapter 17 (commencing with
16 Section 25101), modified as follows:

17 (i) Business income shall be apportioned to a
18 LAMBRA by multiplying total business income by a
19 fraction, the numerator of which is the property factor
20 plus the payroll factor, and the denominator of which is
21 two.

22 (ii) "The LAMBRA" shall be substituted for "this
23 state."

24 (iii) If a loss carryover is allowable pursuant to this
25 section for any income year after the LAMBRA
26 designation has expired, the LAMBRA shall be deemed
27 to remain in existence for purposes of computing this
28 limitation.

29 (E) "LAMBRA expiration date" means the date the
30 LAMBRA designation expires, is no longer binding, or
31 becomes inoperative pursuant to Section 7110 of the
32 Government Code.

33 (d) A taxpayer who qualifies as a "qualified taxpayer"
34 shall, for the income year of the net operating loss and any
35 income year to which that net operating loss may be
36 carried, designate on the original return filed for each
37 year the subdivision of this section which applies to that
38 taxpayer with respect to that net operating loss. If the
39 taxpayer is eligible to qualify under more than one

1 subdivision of this section, the designation is to be made
2 after taking into account subdivision (e).

3 (e) If a taxpayer is eligible to qualify under more than
4 one subdivision of this section as a “qualified taxpayer,”
5 with respect to a net operating loss in an income year, the
6 taxpayer shall designate which subdivision of this section
7 is to apply to the taxpayer.

8 (f) Notwithstanding Section 24416, the amount of the
9 loss determined under this section shall be the only net
10 operating loss allowed to be carried over from that
11 income year and the designation under subdivision (d)
12 shall be included in the election under Section 24416.1.

13 SEC. 102. *Section 24602 of the Revenue and Taxation*
14 *Code is amended to read:*

15 24602. (a) In addition to the application of Part II
16 (commencing with Section 421) of Subchapter D of
17 Chapter 1 of Subtitle A of the Internal Revenue Code,
18 relating to certain stock options, paragraphs (1), (2), and
19 (3) of Section 421(a) of the Internal Revenue Code shall
20 also apply to any ~~other stock option stock option that is~~
21 ~~exercised by an individual whose earned income for the~~
22 ~~taxable year does not exceed forty thousand dollars~~
23 ~~(\$40,000)~~ *California qualified stock option that is granted*
24 *to an individual whose earned income from the*
25 *corporation granting the California qualified stock option*
26 *for the income year in which that option is exercised does*
27 *not exceed forty thousand dollars (\$40,000). In the event*
28 *that the option does not meet the necessary*
29 *qualifications, the option shall be treated as a*
30 *nonqualified stock option.*

31 (b) For purposes of this section, “California qualified
32 stock option” means a stock option *that is* issued and
33 exercised pursuant to this section *and that is designated*
34 *by the corporation issuing the option as a California*
35 *qualified stock option at the time the option is granted.*

36 (c) (1) This section shall apply only to those stock
37 options that are issued on or after January 1, 1997, and
38 before January 1, 2002, by a corporation to its employee
39 and are exercised by the employee, while employed by
40 the corporation that issued those stock options (or within

1 three months thereof, or within one year thereof if
 2 permanently and totally disabled as defined in Section
 3 22(e)(3) of the Internal Revenue Code), during the
 4 income year with respect to any class of shares, or
 5 combination thereof, issued by the corporation, to the
 6 extent that the number of shares transferable by the
 7 exercise of the options does not exceed a total of 1,000 and
 8 have a combined fair market value of less than one
 9 hundred thousand dollars (\$100,000). The combined fair
 10 market value of any stock shall be determined as of the
 11 time the option with respect to that stock is granted.

12 (2) Paragraph (1) shall be applied by taking options
 13 into account in the order in which they were granted.

14 (d) In the case of a California qualified stock option, no
 15 amount shall be included in the gross income of the
 16 employee until such time as the disposition of the option
 17 (or the stock acquired upon exercise of the option). No
 18 deduction shall be allowed under Section 162 of the
 19 Internal Revenue Code to the employer on the grant *or*
 20 *exercise* of a California qualified stock option.

21 (e) Subdivision (d) shall not apply to any stock option
 22 for which an election has been made under Section 83(b)
 23 of the Internal Revenue Code, relating to election to
 24 include in gross income in year of transfer.

25 *SEC. 102.5.* Section 24677 of the Revenue and
 26 Taxation Code is amended to read:

27 24677. (a) If an amount representing damages is
 28 received or accrued by a corporation during an income
 29 year as a result of an award in a civil action for breach of
 30 contract or breach of a fiduciary duty or relationship, then
 31 the tax attributable to the inclusion in gross income for
 32 the income year of that part of the amount that would
 33 have been received or accrued by the corporation in a
 34 prior income year or years but for the breach of contract,
 35 or breach of a fiduciary duty or relationship, shall not be
 36 greater than the aggregate of the increases in taxes that
 37 would have resulted had that part been included in gross
 38 income for that prior income year or years.

39 (b) A corporation in computing the tax shall be
 40 entitled to deduct all credits and deductions for

1 depletion, depreciation, and other items to which it
2 would have been entitled, had the income been received
3 or accrued by the corporation in the year during which
4 it would have received or accrued it, except for the
5 breach of contract or for the breach of fiduciary duty or
6 relationship. The credits, deductions, or other items
7 referred to in the prior sentence, attributable to property,
8 shall be allowed only with respect to that part of the
9 award which represents the corporation's share of
10 income from the actual operation of the property.

11 (c) Subdivision (a) shall not apply unless the amount
12 representing damage is three thousand dollars (\$3,000) or
13 more.

14 SEC. 103. Section 24678 of the Revenue and Taxation
15 Code is amended to read:

16 24678. (a) If an amount representing damages is
17 received or accrued during an income year as a result of
18 an award in, or settlement of, a civil action brought under
19 Section 4 of the act entitled "An act to supplement
20 existing laws against unlawful restraints and monopolies,
21 and for other purposes," approved October 15, 1914
22 (commonly known as the Clayton Act), for injuries
23 sustained by a corporation in its business or property by
24 reason of anything forbidden in the antitrust laws, then
25 the tax attributable to the inclusion of that amount in
26 gross income for the income year shall not be greater than
27 the aggregate of the increases in taxes which would have
28 resulted if that amount had been included in gross income
29 in equal installments for each month during the period in
30 which the injuries were sustained by the corporation.

31 (b) This section shall apply to income years ending
32 after June 23, 1961, but only with respect to amounts
33 received or accrued after that date as a result of awards
34 or settlements made after that date.

35 SEC. 104. Section 24710 of the Revenue and Taxation
36 Code is amended to read:

37 24710. (a) For each income year beginning on or
38 after January 1, 1997, Section 475 of the Internal Revenue
39 Code, relating to mark to market accounting method for
40 securities dealers, as added by Section 13223 of the

1 Revenue Reconciliation Act of 1993 (P.L. 103-66), shall
2 apply, except as otherwise provided.

3 (b) Section 13233(c)(2)(C) of the Revenue
4 Reconciliation Act of 1993 (P.L. 103-66), relating to the
5 effective date for changes in the mark to market
6 accounting method for securities dealers, is modified to
7 provide that the amount taken into account under
8 Section 481 of the Internal Revenue Code of 1986 shall be
9 taken into account ratably over the five-income-year
10 period beginning with the first income year beginning on
11 or after January 1, 1997.

12 SEC. 105. Section 24901 of the Revenue and Taxation
13 Code is amended to read:

14 24901. (a) The gain from the sale or other disposition
15 of property shall be the excess of the amount realized
16 therefrom over the adjusted basis provided in Section
17 24911 for determining gain, and the loss shall be the excess
18 of the adjusted basis provided in that section for
19 determining loss over the amount realized.

20 (b) The amount realized from the sale or other
21 disposition of property shall be the sum of any money
22 received plus the fair market value of the property (other
23 than money) received. In determining the amount
24 realized—

25 (1) There shall not be taken into account any amount
26 received as reimbursement for real property taxes which
27 are treated under Section 24346 as imposed on the
28 purchaser, and

29 (2) There shall be taken into account amounts
30 representing real property taxes which are treated under
31 Section 24346 as imposed on the corporation if those taxes
32 are to be paid by the purchaser.

33 (c) In the case of a sale or exchange of property, the
34 extent to which the gain or loss determined under this
35 section shall be recognized for purposes of this part shall
36 be determined under Section 24902.

37 (d) Nothing in this section shall be construed to
38 prevent (in the case of property sold under contract
39 providing for payment in installments) the taxation of
40 that portion of any installment payment representing

1 gain or profit in the year in which that payment is
2 received.

3 (e) (1) In determining gain or loss from the sale or
4 other disposition of a term interest in property, that
5 portion of the adjusted basis of that interest which is
6 determined pursuant to Sections 24914 and 24915 (to the
7 extent that the adjusted basis is a portion of the entire
8 adjusted basis of the property) shall be disregarded.

9 (2) For purposes of paragraph (1), the term “term
10 interest in property” means—

11 (A) A life interest in property,

12 (B) An interest in property for a term of years, or

13 (C) An income interest in a trust.

14 (3) Paragraph (1) shall not apply to a sale or other
15 disposition which is a part of a transaction in which the
16 entire interest in property is transferred to any person or
17 persons.

18 SEC. 106. Section 24903 of the Revenue and Taxation
19 Code is repealed.

20 SEC. 107. Section 24912 of the Revenue and Taxation
21 Code is amended to read:

22 24912. The basis of property shall be the cost of the
23 property, except as otherwise provided in Chapter 8
24 (commencing with Section 24451), relating to corporate
25 distributions and adjustments, and this chapter. The cost
26 of real property shall not include any amount in respect
27 of real property taxes which are treated under Section
28 24346 as imposed on a corporation.

29 SEC. 108. Section 24916 of the Revenue and Taxation
30 Code is amended to read:

31 24916. Proper adjustment with regard to the property
32 shall in all cases be made as follows:

33 (a) For expenditures, receipts, losses, or other items
34 properly chargeable to capital account. However, no
35 adjustment shall be made for any of the following:

36 (1) Sales or use tax paid or incurred in connection with
37 the acquisition of property for which a tax credit is
38 claimed pursuant to Section 23612.

39 (2) Taxes or other carrying charges described in
40 Section 24426, or for expenditures described in Sections

1 24364 and 24369 for which deductions have been taken in
2 determining net income for the income year or any prior
3 income year.

4 (b) For exhaustion, wear and tear, obsolescence,
5 amortization, and depletion:

6 (1) In the case of corporations subject to the tax
7 imposed by Chapter 2 (commencing with Section 23101),
8 to the extent sustained prior to January 1, 1928, and to the
9 extent allowed (but not less than the amount allowable)
10 under this part, except that no deduction shall be made
11 for amounts in excess of the amount which would have
12 been allowable had depreciation not been computed on
13 the basis of January 1, 1928, value and amounts in excess
14 of the adjustments required by Section 113(b)(1)(B) of
15 the Federal Revenue Act of 1938 for depletion prior to
16 January 1, 1932.

17 (2) In the case of a taxpayer subject to the tax imposed
18 by Chapter 3 (commencing with Section 23501), to the
19 extent sustained prior to January 1, 1937, and for periods
20 thereafter to the extent allowed (but not less than the
21 amount allowable) under the provisions of this part.

22 (3) If a taxpayer has not claimed an amortization
23 deduction for an emergency facility, the adjustment
24 under paragraph (1) shall be made only to the extent
25 ordinarily provided under Sections 24349 and 24372.

26 (c) In the case of stock (to the extent not provided for
27 in the foregoing subdivisions) for the amount of
28 distributions previously made which, under the law
29 applicable to the year in which the distribution was made,
30 either were tax free or were applicable in reduction of
31 basis (not including distributions made by a corporation,
32 which was classified as a personal service corporation
33 under the provisions of the Federal Revenue Act of 1918
34 or 1921, out of its earnings or profits which were taxable
35 in accordance with the provisions of Section 218 of the
36 Federal Revenue Act of 1918 or 1921).

37 (d) (1) In the case of corporations subject to the tax
38 imposed by Chapter 2 (commencing with Section 23101),
39 in the case of any bond, as defined in Section 24363, to the

1 extent of the deductions allowable pursuant to Section
2 24360 with respect thereto.

3 (2) In the case of taxpayers subject to the tax imposed
4 by Chapter 3 (commencing with Section 23501), in the
5 case of any bond, as defined in Section 24363, the interest
6 on which is wholly exempt from the tax imposed by this
7 part, to the extent of the amortizable bond premium
8 disallowable as a deduction pursuant to subdivision (b) of
9 Section 24360, and in the case of any other bond, as
10 defined in Section 24363, to the extent of the deductions
11 allowable pursuant to subdivision (a) of Section 24360 (or
12 the amount applied to reduce interest payments under
13 paragraph (2) of subdivision (a) of Section 24363.5) with
14 respect thereto.

15 (3) In the case of property pledged to the Commodity
16 Credit Corporation, to the extent of the amount received
17 as a loan from the Commodity Credit Corporation and
18 treated by the taxpayer as income for the year in which
19 received pursuant to Section 24273, and to the extent of
20 any deficiency on that loan with respect to which the
21 taxpayer has been relieved from liability.

22 (e) For amounts allowed as deductions as deferred
23 expenses under Section 616(b) of the Internal Revenue
24 Code, relating to certain expenditures in the
25 development of mines, and resulting in a reduction of the
26 taxpayer's tax, but not less than the amounts allowable
27 under that section for the income year and prior years.

28 (f) For amounts allowable as deductions as deferred
29 expenses under Section 617(a) of the Internal Revenue
30 Code, relating to certain exploration expenditures, and
31 resulting in a reduction of the taxpayer's tax, but not less
32 than the amounts allowable under that section for the
33 income year and prior years.

34 (g) For amounts allowed as deductions as deferred
35 expenses under subdivision (a) of Section 24366, relating
36 to research and experimental expenditures, and resulting
37 in a reduction of the corporations' taxes under this part,
38 but not less than the amounts allowable under that
39 section for the income year and prior years.



1 (h) For amounts allowed as deductions under Sections
2 24356.2, 24356.3, and 24356.4.

3 (i) (1) To the extent provided in Section
4 179A(e)(6)(A) of the Internal Revenue Code, relating to
5 basis reduction for clean-fuel vehicles and certain
6 refueling property.

7 (2) This subdivision shall apply to property placed in
8 service after June 30, 1993, without regard to income year.

9 SEC. 109. Section 24917 of the Revenue and Taxation
10 Code is amended to read:

11 24917. Whenever it appears that the basis of property
12 in the hands of the corporation is a substituted basis, then
13 the adjustments provided in Section 24916 shall be made
14 after first making in respect of that substituted basis
15 proper adjustments of a similar nature in respect of the
16 period during which the property was held by the
17 transferor, donor, or grantor, or during which the other
18 property was held by the person for whom the basis is to
19 be determined. A similar rule shall be applied in the case
20 of a series of substituted bases.

21 SEC. 110. Section 24918 of the Revenue and Taxation
22 Code is amended to read:

23 24918. (a) Section 1017 of the Internal Revenue
24 Code, relating to discharge of indebtedness, shall apply,
25 except as otherwise provided. References to affiliated
26 groups which file a consolidated return under Section
27 1501 of the Internal Revenue Code shall be treated as
28 meaning members of the same unitary group which file
29 a combined report under Article 1 (commencing with
30 Section 25101) of Chapter 17.

31 (b) The amendments to Section 1017 of the Internal
32 Revenue Code made by Section 13226 of the Revenue and
33 Reconciliation Act of 1993 (P.L. 103-66), relating to
34 modifications of discharge of indebtedness provisions,
35 shall apply to discharges occurring on or after January 1,
36 1996, in income years beginning on or after January 1,
37 1996.

38 SEC. 111. Section 24942 of the Revenue and Taxation
39 Code is amended to read:

1 24942. (a) No gain or loss shall be recognized to a
2 corporation on the receipt of money or other property in
3 exchange for stock (including treasury stock) of that
4 corporation. No gain or loss shall be recognized by a
5 corporation with respect to any lapse or acquisition of an
6 option to buy or sell its stock (including treasury stock).

7 (b) For basis of property acquired by a corporation in
8 certain exchanges for its stock, see Sections 24552 to 24554,
9 inclusive.

10 SEC. 112. Section 24954 is added to the Revenue and
11 Taxation Code, to read:

12 24954. Section 1042 of the Internal Revenue Code,
13 relating to sales of stock to employee stock ownership
14 plans or certain cooperatives, shall apply to income years
15 beginning on or after January 1, 1996.

16 SEC. 113. Section 25105 of the Revenue and Taxation
17 Code is amended to read:

18 25105. (a) For purposes of this article, other than
19 Section 25102, the income and apportionment factors of
20 two or more corporations shall be included in a combined
21 report only if the corporations, otherwise meeting the
22 requirements of Section 25101 or 25101.15, are members
23 of a commonly controlled group.

24 (b) A “commonly controlled group” means any of the
25 following:

26 (1) A parent corporation and any one or more
27 corporations or chains of corporations, connected
28 through stock ownership (or constructive ownership)
29 with the parent, but only if—

30 (A) The parent owns stock possessing more than 50
31 percent of the voting power of at least one corporation,
32 and, if applicable,

33 (B) Stock cumulatively representing more than 50
34 percent of the voting power of each of the corporations,
35 except the parent, is owned by the parent, one or more
36 corporations described in subparagraph (A), or one or
37 more other corporations that satisfy the conditions of this
38 subparagraph.

39 (2) Any two or more corporations, if stock
40 representing more than 50 percent of the voting power

1 of the corporations is owned, or constructively owned, by
2 the same person.

3 (3) Any two or more corporations that constitute
4 stapled entities.

5 (A) For purposes of this paragraph, “stapled entities”
6 means any group of two or more corporations if more
7 than 50 percent of the ownership or beneficial ownership
8 of the stock possessing voting power in each corporation
9 consists of stapled interests.

10 (B) Two or more interests are stapled interests if, by
11 reason of form of ownership restrictions on transfer, or
12 other terms or conditions, in connection with the transfer
13 of one of the interests the other interest or interests are
14 also transferred or required to be transferred.

15 (4) Any two or more corporations, all of whose stock
16 representing more than 50 percent of the voting power
17 of the corporations is cumulatively owned (without
18 regard to the constructive ownership rules of paragraph
19 (1) of subdivision (e)) by, or for the benefit of, members
20 of the same family. Members of the same family are
21 limited to an individual, his or her spouse, parents,
22 brothers or sisters, grandparents, children and
23 grandchildren, and their respective spouses.

24 (c) (1) If, in the application of subdivision (b), a
25 corporation is eligible to be treated as a member of more
26 than one commonly controlled group of corporations, the
27 corporation shall elect to be treated as a member of only
28 one commonly controlled group. This election shall
29 remain in effect unless revoked with the approval of the
30 Franchise Tax Board.

31 (2) Membership in a commonly controlled group shall
32 be treated as terminated in any year, or fraction thereof,
33 in which the conditions of subdivision (b) are not met,
34 except as follows:

35 (A) When stock of a corporation is sold, exchanged, or
36 otherwise disposed of, the membership of a corporation
37 in a commonly controlled group shall not be terminated,
38 if the requirements of subdivision (b) are again met
39 immediately after the sale, exchange, or disposition.

1 (B) The Franchise Tax Board may treat the commonly
2 controlled group as remaining in place if the conditions
3 of subdivision (b) are again met within a period not to
4 exceed two years.

5 (d) A taxpayer may exclude some or all corporations
6 included in a “commonly controlled group” by reason of
7 paragraph (4) of subdivision (b) by showing that those
8 members of the group are not controlled directly or
9 indirectly by the same interests, within the meaning of
10 the same phrase in Section 482 of the Internal Revenue
11 Code. For purposes of this subdivision, the term
12 “controlled” includes any kind of control, direct or
13 indirect, whether legally enforceable, and however
14 exercisable or exercised.

15 (e) Except as otherwise provided, stock is “owned”
16 when title to the stock is directly held or if the stock is
17 constructively owned.

18 (1) An individual constructively owns stock that is
19 owned by any of the following:

20 (A) His or her spouse.

21 (B) Children, including adopted children, of that
22 individual or the individual’s spouse, who have not
23 attained the age of 21 years.

24 (C) An estate or trust, of which the individual is an
25 executor, trustee, or grantor, to the extent that the estate
26 or trust is for the benefit of that individual’s spouse or
27 children.

28 (2) Stock owned by a corporation, or a member of a
29 controlled group of which the corporation is the parent
30 corporation, is constructively owned by any shareholder
31 owning stock that represents more than 50 percent of the
32 voting power of the corporation.

33 (3) Stock owned by a partnership is constructively
34 owned by any partner, other than a limited partner, in
35 proportion to the partner’s capital interest in the
36 partnership. For this purpose, a partnership is treated as
37 owning proportionately the stock owned by any other
38 partnership in which it has a tiered interest, other than as
39 a limited partner.

(4) In any case where a member of a commonly controlled group, or shareholders, officers, directors, or employees of a member of a commonly controlled group, is a general partner in a limited partnership, stock held by the limited partnership is constructively owned by a limited partner to the extent of its capital interest in the limited partnership.

(f) For purposes of this section, each of the following shall apply:

(1) "Corporation" means a subchapter S corporation, any other incorporated entity, or any entity defined or treated as a corporation pursuant to Section 23038 or 23038.5.

(2) "Person" means an individual, a trust, an estate, a qualified employee benefit plan, a limited partnership, or a corporation.

(3) "Voting power" means the power of all classes of stock entitled to vote that possess the power to elect the membership of the board of directors of the corporation.

(4) "More than 50 percent of the voting power" means voting power sufficient to elect a majority of the membership of the board of directors of the corporation.

(5) "Stock representing voting power" includes stock where ownership is retained but the actual voting power is transferred in either of the following manners:

(A) For one year or less.

(B) By proxy, voting trust, written shareholder agreement, or by similar device, where the transfer is revocable by the transferor.

(g) The Franchise Tax Board may prescribe any regulations as may be necessary or appropriate to carry out the purposes of this section, including, but not limited to, regulations that do the following:

(1) Prescribe terms and conditions relating to the election described by subdivision (c), and the revocation thereof.

(2) Disregard transfers of voting power not described by paragraph (5) of subdivision (f).

(3) Treat entities not described by paragraph (2) of subdivision (f) as a person.

1 (4) Treat warrants, obligations convertible into stock,
2 options to acquire or sell stock, and similar instruments as
3 stock.

4 (5) Treat holders of a beneficial interest in, or executor
5 or trustee powers over, stock held by an estate or trust as
6 constructively owned by the holder.

7 (6) Prescribe rules relating to the treatment of
8 partnership agreements which authorize a particular
9 partner or partners to exercise voting power of stock held
10 by the partnership.

11 (h) This section shall apply to income years beginning
12 on or after January 1, 1995.

13 SEC. 114. Section 25110 of the Revenue and Taxation
14 Code is amended to read:

15 25110. (a) Notwithstanding Section 25101, a qualified
16 taxpayer, as defined in paragraph (2) of subdivision (b),
17 that is subject to the tax imposed under this part, may
18 elect to determine its income derived from or
19 attributable to sources within this state pursuant to a
20 water's-edge election in accordance with the provisions
21 of this part, as modified by this article. A taxpayer that
22 makes a water's-edge election shall take into account the
23 income and apportionment factors of the following
24 affiliated entities only:

25 (1) Domestic international sales corporations, as
26 described in Sections 991 to 994, inclusive, of the Internal
27 Revenue Code and foreign sales corporations as
28 described in Sections 921 to 927, inclusive, of the Internal
29 Revenue Code.

30 (2) Any corporation (other than a bank), regardless of
31 the place where it is incorporated if the average of its
32 property, payroll, and sales factors within the United
33 States is 20 percent or more.

34 (3) Corporations that are incorporated in the United
35 States, excluding corporations making an election
36 pursuant to Sections 931 to 936, inclusive, of the Internal
37 Revenue Code, of which more than 50 percent of their
38 voting stock is owned or controlled directly or indirectly
39 by the same interests.

1 (4) A corporation that is not described in paragraphs
2 (1) to (3), inclusive, or paragraph (5), but only to the
3 extent of its income derived from or attributable to
4 sources within the United States and its factors assignable
5 to a location within the United States in accordance with
6 paragraph (3) of subdivision (b). Income of such a
7 corporation derived from or attributable to sources
8 within the United States as determined by federal income
9 tax laws shall be limited to and determined from the
10 books of account maintained by the corporation with
11 respect to its activities conducted within the United
12 States.

13 (5) Export trade corporations, as described in Sections
14 970 to 972, inclusive, of the Internal Revenue Code.

15 (6) Any affiliated corporation which is a “controlled
16 foreign corporation,” as defined in Section 957 of the
17 Internal Revenue Code, if all or part of the income of that
18 affiliate is defined in Section 952 of Subpart F of the
19 Internal Revenue Code (“Subpart F income”). The
20 income and apportionment factors of any affiliate to be
21 included under this paragraph shall be determined by
22 multiplying the income and apportionment factors of
23 that affiliate without application of this paragraph by a
24 fraction (not to exceed one), the numerator of which is
25 the “Subpart F income” of that corporation for that
26 income year and the denominator of which is the
27 “earnings and profits” of that corporation for that income
28 year, as defined in Section 964 of the Internal Revenue
29 Code.

30 (7) (A) The income and factors of the
31 above-enumerated corporations shall be taken into
32 account only if the income and factors would have been
33 taken into account under Section 25101 if this section had
34 not been enacted.

35 (B) The income and factors of a corporation that is not
36 described in paragraphs (1) to (3), inclusive, and
37 paragraph (5) and that is an electing taxpayer under this
38 subdivision shall be taken into account in determining its
39 income only to the extent set forth in paragraph (4).

40 (b) For purposes of this article and Section 24411:

1 (1) An “affiliated corporation” means a corporation
2 that is a member of a commonly controlled group as
3 defined in Section 25105.

4 (2) A “qualified taxpayer” means a corporation which
5 does both of the following:

6 (A) Files with the state tax return on which the
7 water’s-edge election is made a consent to the taking of
8 depositions at the time and place most reasonably
9 convenient to all parties from key domestic corporate
10 individuals and to the acceptance of subpoenas duces
11 tecum requiring reasonable production of documents to
12 the Franchise Tax Board as provided in Section 19504 or
13 by the State Board of Equalization as provided in Title 18,
14 California Code of Regulations, Section 5005, or by the
15 courts of this state as provided in Chapter 2 (commencing
16 with Section 1985) of Title 3 of Part 4 of, and Section 2025
17 of, the Code of Civil Procedure. The consent relates to
18 issues of jurisdiction and service and does not waive any
19 defenses a taxpayer may otherwise have. The consent
20 shall remain in effect so long as the water’s-edge election
21 is in effect and shall be limited to providing that
22 information necessary to review or to adjust income or
23 deductions in a manner authorized under Sections 482,
24 861, Subpart F of Part III of Subchapter N, or similar
25 provisions of the Internal Revenue Code, together with
26 the regulations adopted pursuant to those provisions, and
27 for the conduct of an investigation with respect to any
28 unitary business in which the taxpayer may be involved.

29 (B) Agrees that for purposes of this article, dividends
30 received by any corporation whose income and
31 apportionment factors are taken into account pursuant to
32 subdivision (a) from either of the following are
33 functionally related dividends and shall be presumed to
34 be business income:

35 (i) A corporation of which more than 50 percent of the
36 voting stock is owned, directly or indirectly, by members
37 of the unitary group and which is engaged in the same
38 general line of business.

39 (ii) Any corporation that is either a significant source
40 of supply for the unitary business or a significant

1 purchaser of the output of the unitary business, or that
2 sells a significant part of its output or obtains a significant
3 part of its raw materials or input from the unitary
4 business. “Significant,” as used in this subparagraph,
5 means an amount of 15 percent or more of either input
6 or output.

7 All other dividends shall be classified as business or
8 nonbusiness income without regard to this subparagraph.

9 (3) The definitions and locations of property, payroll,
10 and sales shall be determined under the laws and
11 regulations that set forth the apportionment formulas
12 used by the individual states to assign net income subject
13 to taxes on or measured by net income in that state. If a
14 state does not impose a tax on or measured by net income
15 or does not have laws or regulations with respect to the
16 assignment of property, payroll, and sales, the laws and
17 regulations provided in Article 2 (commencing with
18 Section 25120) shall apply.

19 Sales shall be considered to be made to a state only if the
20 corporation making the sale may otherwise be subject to
21 a tax on or measured by net income under the
22 Constitution or laws of the United States, and shall not
23 include sales made to a corporation whose income and
24 apportionment factors are taken into account pursuant to
25 subdivision (a) in determining the amount of income of
26 the taxpayer derived from or attributable to sources
27 within this state.

28 (4) “The United States” means the 50 states of the
29 United States and the District of Columbia.

30 (c) All references in this part to income determined
31 pursuant to Section 25101 shall also mean income
32 determined pursuant to this section.

33 SEC. 115. Section 25111 of the Revenue and Taxation
34 Code is amended to read:

35 25111. (a) The making of a water’s-edge election as
36 provided for in Section 25110 shall be made by contract
37 with the Franchise Tax Board in the original return for a
38 year and shall be effective only if every taxpayer that is
39 a member of the water’s-edge group and which is subject
40 to tax under this part makes the election. A single

1 taxpayer that is engaged in more than one business
2 activity subject to allocation and apportionment as
3 provided in Article 2 (commencing with Section 25120)
4 of Chapter 17 may make a separate election for each
5 business. The form and manner of making the
6 water's-edge election shall be prescribed by the
7 Franchise Tax Board. Each contract making a
8 water's-edge election shall be for an initial term of 84
9 months, except as provided in subdivisions (b). Each
10 contract shall provide that on the anniversary date of the
11 contract or any other annual date specified by the
12 contract a year shall be added automatically to the initial
13 term unless notice of nonrenewal is given as provided in
14 subdivision (d). An affiliated corporation that is a
15 member of the water's-edge group and subsequently
16 becomes subject to tax under this part or is a nonelecting
17 taxpayer that is subsequently proved to be a member of
18 the water's-edge group pursuant to Franchise Tax Board
19 audit determination, as evidenced by a notice of
20 deficiency proposed to be assessed or a notice of tax
21 change, shall be deemed to have elected.

22 No water's-edge election shall be made for an income
23 year beginning prior to January 1, 1988.

24 (b) A water's-edge election may be terminated by a
25 taxpayer prior to the end of the 84-month period if either
26 of the following occurs:

27 (1) The taxpayer is acquired directly or indirectly by
28 a nonelecting entity which alone or together with those
29 affiliates included in its combined report is larger than the
30 taxpayer as measured by equity capital.

31 (2) With the permission of the Franchise Tax Board.

32 (c) In granting a change of election, the Franchise Tax
33 Board shall impose any conditions that are necessary to
34 prevent the avoidance of tax or to clearly reflect income
35 for the period the election was, or was purported to be,
36 in effect. These conditions may include a requirement
37 that income, including dividends paid from income
38 earned while a water's-edge election was in effect, which
39 would have been included in determining the income of
40 the taxpayer from sources within and without this state

1 pursuant to Section 25101 but for the water's-edge
2 election shall be included in income in the year in which
3 the election is changed.

4 (d) If the taxpayer desires in any year not to renew the
5 election, the taxpayer shall serve written notice of
6 nonrenewal upon the board at least 90 days in advance of
7 the annual renewal date. Unless that written notice is
8 provided to the board, the election shall be considered
9 renewed as provided in subdivision (a).

10 (e) If the taxpayer serves notice of intent in any year
11 not to renew the existing water's-edge election, that
12 existing election shall remain in effect for the balance of
13 the period remaining since the original election or the last
14 renewal of the election, as the case may be.

15 SEC. 116. Section 25112 of the Revenue and Taxation
16 Code is amended to read:

17 25112. (a) If a taxpayer electing to file under Section
18 25110 fails to supply any information described in
19 subdivision (b), the taxpayer shall pay a penalty of one
20 thousand dollars (\$1,000) for each income year with
21 respect to which the failure occurs.

22 (b) A taxpayer electing to file pursuant to Section
23 25110 shall do all of the following:

24 (1) Retain and make available to the Franchise Tax
25 Board, upon request, the documents and information,
26 including any questionnaires completed and submitted
27 to the Internal Revenue Service or qualified states, that
28 are necessary to audit issues involving attribution of
29 income to the United States or foreign jurisdictions under
30 Sections 482, 861, 863, 902, and 904, and Subpart F of Part
31 III of Subchapter N, or similar sections of the Internal
32 Revenue Code.

33 (2) Identify, upon request, principal officers or
34 employees who have substantial knowledge of, and access
35 to, documents and records that discuss pricing policies,
36 profit centers, cost centers, and the methods of allocating
37 income and expense among these centers. The
38 information shall include the employees' titles and
39 addresses.

1 (3) Retain and make available, upon request, all
2 documents and correspondence ordinarily available to a
3 corporation included in the water's-edge election that are
4 submitted to, or obtained from, the Internal Revenue
5 Service, foreign countries or their territories or
6 possessions, and competent authority pertaining to ruling
7 requests, rulings, settlement resolutions, and competing
8 claims involving jurisdictional assignment and sourcing of
9 income that affect the assignment of income to the
10 United States. The documents shall include all ruling
11 requests and rulings on reorganizations involving foreign
12 incorporation of branches, all ruling requests and rulings
13 on changing a corporation's jurisdictional incorporation,
14 and all documents that are ordinarily available to a
15 corporation included in the water's-edge election that
16 pertain to the determination of foreign tax liability,
17 including examination reports issued by foreign taxing
18 administrations. If the documents have been translated,
19 the translations shall be furnished.

20 (4) Retain and make available, upon request,
21 information filed with the Internal Revenue Service to
22 comply with Sections 6038, 6038A, 6038B, 6038C, and 6041
23 of the Internal Revenue Code.

24 (5) Upon request, prepare and make available for each
25 corporation organized or created under the laws of the
26 United States or a political subdivision thereof, of which
27 50 percent or more of its voting stock is directly or
28 indirectly owned or controlled, the information that
29 would be included in the forms described in paragraph
30 (5) if those forms were required for United States
31 corporations.

32 (6) Retain and make available, upon request, all state
33 tax returns filed by each corporation included under
34 subdivision (a) in each state, including the District of
35 Columbia.

36 (7) Comply with reasonable requests for information
37 necessary to determine or verify its net income,
38 apportionment factors, or the geographic source of that
39 income pursuant to the Internal Revenue Code.



1 (8) For purposes of this subdivision, information for
2 any year shall be retained for that period of time in which
3 the taxpayer's income or franchise tax liability to this state
4 may be subject to adjustment, including all periods in
5 which additional income or franchise taxes may be
6 assessed or during which an appeal is pending before the
7 State Board of Equalization or a lawsuit is pending in the
8 courts of this state or the United States with respect to
9 California franchise or income tax.

10 (c) If the failure continues for more than 90 days after
11 the date on which the Franchise Tax Board mails notice
12 of that failure to the taxpayer, the taxpayer shall pay a
13 penalty (in addition to the amount required under
14 subdivision (a)) of one thousand dollars (\$1,000) for each
15 30-day period (or fraction thereof) during which the
16 failure continues after the expiration of the 90-day period.
17 The increase in any penalty under this subdivision shall
18 not exceed twenty-four thousand dollars (\$24,000).

19 (d) If the taxpayer fails to comply substantially with
20 any formal document request arising out of the
21 examination of the tax treatment of any item (hereafter
22 in this section referred to as the "examined item") before
23 the 90th day after the date of the mailing of the request,
24 any court having jurisdiction of a civil proceeding in
25 which the tax treatment of the examined item is an issue
26 may, upon motion by the Franchise Tax Board, prohibit
27 the introduction by the taxpayer of documentation
28 covered by that request.

29 (e) For purposes of this section, the time in which
30 information is to be furnished (and the beginning of the
31 90-day period after notice by the Franchise Tax Board)
32 shall be treated as beginning not earlier than the last day
33 on which reasonable cause existed for failure to furnish
34 the information.

35 (f) This section shall not apply with respect to any
36 requested documentation if the taxpayer establishes that
37 the failure to provide the documentation, as requested by
38 the Franchise Tax Board, is due to reasonable cause. For
39 purposes of subdivision (d), the fact that a foreign
40 jurisdiction would impose a civil or criminal penalty on

1 the taxpayer (or any other person) for disclosing the
2 requested documentation is not reasonable cause unless,
3 after in-camera review of the documentation, the court
4 finds otherwise.

5 (g) For purposes of this section, the term “formal
6 document request” means any request (made after the
7 normal request procedures have failed to produce the
8 requested documentation) for the production of
9 documentation that is mailed by registered or certified
10 mail to the taxpayer at its last known address and that sets
11 forth all of the following:

12 (1) The time and place for the production of the
13 documentation.

14 (2) A statement of the reason the documentation
15 previously produced (if any) is not sufficient.

16 (3) A description of the documentation being sought.

17 (4) The consequences to the taxpayer of the failure to
18 produce the documentation described in this section.

19 (h) Notwithstanding any other law or rule of law, any
20 taxpayer to whom a formal document request is mailed
21 may begin a proceeding to quash that request not later
22 than the 90th day after the date the request was mailed.
23 In that proceeding, the Franchise Tax Board may seek to
24 compel compliance with the request.

25 (i) The superior courts of the State of California for the
26 Counties of Los Angeles, Sacramento, and San Diego, and
27 for the City and County of San Francisco shall have
28 jurisdiction to hear any proceeding brought under
29 subdivision (h). An order denying the petition shall be
30 deemed a final order that may be appealed.

31 The running of the 90-day period referred to in
32 subdivision (c) shall be suspended during any period
33 during which a proceeding brought under subdivision
34 (h) is pending.

35 (j) For purposes of this section, “documentation”
36 means any documentation which may be relevant or
37 material to the tax treatment of the examined item.

38 (k) The Franchise Tax Board, and any court having
39 jurisdiction over a proceeding under subdivision (g), may
40 extend the 90-day period referred to in subdivision (b).

(l) If any corporation takes any action as provided in subdivision (h), the running of any period of limitations under Sections 19057 to 19067, inclusive (relating to the assessment and collection of tax), or under Section 19704 (relating to criminal prosecutions) with respect to that corporation shall be suspended for the period during which the proceedings under subdivision (h) and appeals thereto are pending.

SEC. 117. Section 25128 of the Revenue and Taxation Code is amended to read:

25128. (a) Notwithstanding Section 38006, all business income shall be apportioned to this state by multiplying the business income by a fraction, the numerator of which is the property factor plus the payroll factor plus twice the sales factor, and the denominator of which is four, except as provided in subdivision (b) or (c).

(b) If an apportioning trade or business derives more than 50 percent of its “gross business receipts” from conducting one or more qualified business activities, all business income of the apportioning trade or business shall be apportioned to this state by multiplying business income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three.

(c) For purposes of this section, a “qualified business activity” means the following:

- (1) An agricultural business activity.
- (2) An extractive business activity.
- (3) A savings and loan activity.
- (4) A banking or financial business activity.

(d) For purposes of this section:

(1) “Gross business receipts” means gross receipts described in subdivision (e) of Section 25120 (other than gross receipts from sales or other transactions within an apportioning trade or business between members of a group of corporations whose income and apportionment factors are required to be included in a combined report under Section 25101, limited, if applicable, by Section 25110), whether or not the receipts are excluded from the sales factor by operation of Section 25137.

1 (2) “Agricultural business activity” means activities
2 relating to any stock, dairy, poultry, fruit, furbearing
3 animal, or truck farm, plantation, ranch, nursery, or
4 range. “Agricultural business activity” also includes
5 activities relating to cultivating the soil or raising or
6 harvesting any agricultural or horticultural commodity,
7 including, but not limited to, the raising, shearing,
8 feeding, caring for, training, or management of animals
9 on a farm as well as the handling, drying, packing,
10 grading, or storing on a farm any agricultural or
11 horticultural commodity in its unmanufactured state, but
12 only if the owner, tenant, or operator of the farm
13 regularly produces more than one-half of the commodity
14 so treated.

15 (3) “Extractive business activity” means activities
16 relating to the production, refining, or processing of oil,
17 natural gas, or mineral ore.

18 (4) “Savings and loan activity” means any activities
19 performed by savings and loan associations or savings
20 banks which have been chartered by federal or state law.

21 (5) “Banking or financial business activity” means
22 activities attributable to dealings in money or moneyed
23 capital in substantial competition with the business of
24 national banks.

25 (6) “Apportioning trade or business” means a distinct
26 trade or business whose business income is required to be
27 apportioned under Sections 25101 and 25120, limited, if
28 applicable, by Section 25110, using the same denominator
29 for each of the applicable payroll, property, and sales
30 factors.

31 (7) Paragraph (4) of subdivision (c) shall apply only if
32 the Franchise Tax Board adopts the Proposed Multistate
33 Tax Commission Formula for the Uniform
34 Apportionment of Net Income from Financial
35 Institutions, or its substantial equivalent, and shall
36 become operative upon the same operative date as the
37 adopted formula.

38 (8) In any case where the income and apportionment
39 factors of two or more affiliated savings associations or
40 corporations are required to be included in a combined

1 report under Section 25101, limited, if applicable, by
2 Section 25110, both of the following shall apply:

3 (A) The application of the more than 50 percent test
4 of subdivision (b) shall be made with respect to the “gross
5 business receipts” of the entire apportioning trade or
6 business of the group.

7 (B) The entire business income of the group shall be
8 apportioned in accordance with either subdivision (a) or
9 (b), as applicable.

10 SEC. 118. Section 1088.5 of the Unemployment
11 Insurance Code is amended to read:

12 1088.5. (a) In addition to information reported in
13 accordance with Section 1088, each employer shall file
14 with the department the information provided in
15 subdivision (b) on new employees.

16 (b) Each employer shall report all of the following
17 information to the department:

18 (1) The hiring of any person who resides or works in
19 this state to whom the employer anticipates paying
20 earnings.

21 (2) The rehiring or return to work of any person who
22 has been laid off, furloughed, separated, granted a leave
23 without pay, or terminated from employment, and to
24 whom the employer anticipates paying wages.

25 (c) Employers shall not be required to report on any
26 of the following persons:

27 (1) Any person whom the employer pays wages of less
28 than three hundred dollars (\$300) each month.

29 (2) Any person who is under 18 years of age.

30 (d) (1) The department and the State Department of
31 Social Services, jointly, shall adopt rules and regulations
32 to establish exemptions in addition to those provided in
33 subdivision (c), if the department and the State
34 Department of Social Services determine the exemptions
35 are needed to reduce unnecessary or burdensome
36 reporting or are needed to facilitate cost-effective
37 operation of this section.

38 (2) The department and the State Department of
39 Social Services shall adopt regulations required pursuant
40 to paragraph (1) by April 1, 1993.

(e) (1) Employers shall submit a report within 30 days of the hiring, rehiring, or return to work of any person on whom the employer is required to report pursuant to this section.

(2) The report shall contain all of the following:

(A) The first initial and last name and social security number of the person.

(B) The employer's name, address, and state employer identification number.

(3) The report required by Section 1088 shall not be accepted in lieu of the report required by this section.

(f) Employers may report pursuant to this section, by submitting a copy of the employee's W-4 form, a form provided by the department, or any other hiring document, by mail or telefaxing or by any other means that is authorized by the department and that will result in timely reporting.

(g) The department shall retain information collected pursuant to this section for no more than 180 days after the end of the calendar quarter, except for purposes of enforcement of subdivision (i).

(h) The department may use the information collected pursuant to this section only for the following purposes:

(1) The administration and enforcement of this section.

(2) The identification, prevention, and collection of benefit overpayments pursuant to any of the following provisions:

(A) Article 4 (commencing with Section 1375) of Chapter 5.

(B) Article 5 (commencing with Section 2735) of Chapter 2 of Part 2.

(C) Section 3751.

(D) Section 4751.

(3) The location of noncustodial parents or the income of noncustodial parents.

(4) The identification of errors in employer reports of wages filed pursuant to Section 1088.

(5) The verification of employment of applicants for, and recipients of, services under the Aid to Families with Dependent Children program or the Food Stamp Program, provided for pursuant to Chapter 2 (commencing with Section 11200) of Part 3 and Chapter 10 (commencing with Section 18900) of Part 6, respectively, of Division 9 of the Welfare and Institutions Code.

(6) The identification and collection of delinquent liabilities under this code.

(7) To assist the department in determining the effectiveness of its job placement services.

(i) Information obtained by the department pursuant to this section may be released to the Franchise Tax Board for tax enforcement purposes.

(j) The department shall provide a written notice to any employer for the employer's first failure to report any new hire, rehire, or return to work of an employee. For each subsequent failure to report as required by this section that occurs after the date the employer receives notice from the department of his or her first failure to report, unless the failure is due to good cause, the employer shall be subject to a penalty of two hundred fifty dollars (\$250).

(k) The department shall not enforce the employer reporting requirements of this section until April 1, 1993, or when regulations are adopted pursuant to subdivision (d), whichever is sooner.

(l) For purposes of this section, "wages" means the same as defined in Section 926.

SEC. 119. Section 56 of Chapter 952 of the Statutes of 1996 is amended to read:

SEC. 56. Except as otherwise provided, the provisions of this act shall be applied to taxable or income years beginning on or after January 1, 1997.

SEC. 120. The Legislature finds and declares that the amendments to Sections 17052.15, 17053.45, 17053.46, 18402, 18604, 18606, 18621.5, 18637, 18638, 18662, 18670, 19009, 19011, 19023, 19024 (with respect to references to a bank or corporation), 19058, 19132.5, 19141.5, 19141.6

1 (with respect to references to a bank or corporation),
2 19147, 19164, 19192, 19254, 19263, 19301, 19392, 19411,
3 19542, 19563, 19701, 19705, 19706, 19719, 23037, 23038,
4 23040.1, 23095, 23098, 23151, 23151.1, 23151.2, 23153 (with
5 respect to references to a bank or corporation), 23186,
6 23303, 23305.2, 23334, 23455 (with respect to references to
7 a bank or corporation), 23501, 23610.5, 23612.6 (with
8 respect to references to a bank or corporation), 23623.5,
9 23625, 23645 (with respect to references to a bank or
10 corporation), 23646 (with respect to references to a bank
11 or corporation), 23731, 24346, 24356.4, 24356.8, 24357,
12 24358, 24359, 24402, 24407, 24408, 24409, 24416, 24416.2,
13 24677, 24678, 24901, 24912, 24916, 24917, 24942, 25105,
14 25110, 25111, 25112, and 25128 of the Revenue and
15 Taxation Code made by this act are consistent with the
16 intent of the acts enacting those sections, and as such shall
17 apply from the original effective dates of those acts.

18 SEC. 121. The amendments made to Section 23186 of,
19 and the repeal of Sections 23186.1, 23186.2, and 23186.5 of,
20 the Revenue and Taxation Code by this act shall become
21 operative on January 1, 1998.

22 SEC. 122. Except as otherwise provided in Section 120
23 of this act, the amendments made to Sections 23101,
24 23153, and 24411 of the Revenue and Taxation Code by
25 this act shall apply to income years beginning on or after
26 January 1, 1998.

27 SEC. 123. The Legislature finds and declares that this
28 act repeals provisions that have been obsolete since
29 January 1, 1981, when the provisions of Chapter 1150 of
30 the Statutes of 1979 took effect, providing financial
31 corporations with the same taxation treatment as banks,
32 thereby prohibiting the imposition of personal property
33 taxes or business license taxes on financial corporations by
34 local jurisdictions. The repeal of Sections 23184, 23184.5,
35 23185, 23185a, and 23185b of the Revenue and Taxation
36 Code made by this act shall not affect any act done or any
37 right accruing or accrued, or any suit, appeal, or other
38 proceeding that commenced under any of those sections
39 before that repeal.

1 SEC. 124. This act provides for a tax levy within the
2 meaning of Article IV of the Constitution and shall go into
3 immediate effect. However, the individual sections of this
4 act shall become operative as otherwise specifically
5 provided in this act.

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